PROVINC
DISTRI

a

31471

K V827
Q3

PROVINCE OF CANADA,
DISTRICT OF QUEBEC.

In the Superior Court.

No. *The — day of — eighteen hundred and fifty nine.*

WILLIAM BROWN, of the Parish of Beauport, Trader and Miller,

Plaintiff.

vs.

BARTHOLOMEW CONRAD AUGUSTUS GUGY, of the said Parish of Beauport, in the District of Quebec, Esquire, Advocate,

Defendant.

To the Honorable Judges of the said Court.

The undersigned Experts have the honor to report:

THAT in pursuance with, and to carry out the intentions of a certain interlocutory judgment, issued by the said Court, on the eighteenth day of April, one thousand eight hundred and fifty seven, after having been duly named and sworn, in conformity with the requisitions of the said judgment, they did proceed in presence of the parties, and after due notification to them to that effect, on the third day of July, of the same year, and thence with all due diligence, according to adjournement, from to time to the execution of the duties imposed on them by the said interlocutory judgment. The said Experts after much time lost, since the issuing of the said judgment, in fruitless endeavours, to be finally sworn on account of the repeated objections on one side, and the other to their nomination which necessitated the presence of the said Experts, at the Court House for several days in succession: proceeded at last and as aforesaid. Firstly, to inform themselves thoroughly of the duties they had to perform as contained in the said judgment and of the best mode of carrying out the same.

The survey of the premises was next proceeded with, in conjunction with a most careful examination of the river Beauport, its present and former bed, and of the natural a and artificial obstructions to the flow of the water therein, between the high road at the bridge and the building designated by the witnesses in this cause as the wooden store. It was also found necessary by the Experts for the thorough investigation of some of the points at issue to survey and level the said river to a distance lower down than the said wooden store, partly also with the view of connecting again with the main road by lines in rear or to the west of the old Distillery Building thereby completing the circuit and insuring and proving the accuracy of the survey. With the view of examining the volume and course of the water coming from the interior, during the spring floods as thereunto required by the said judgment, the said Experts also surveyed part of the channel above the high road at the bridge. During the survey of the premises and previous to and after the said survey, and at every season of the year, the said Experts did examine the respective levels of the ordinary and high tides, the manner in which the said tides covered the bed and banks of the said river and the several wharves adjoining thereto and the depths a to which they did so cover them. Also and on each occasion and at all seasons of the year as aforesaid, the depth to which the water rose on the mill wheel and the duration and frequency of the stoppage thereof under the above named circumstances. In a word the said Experts have continued their examination of the premises and their observations on the tides and freshets, etc., almost constantly since the spring of eighteen hundred and fifty eight, up to the present time. Nor have they spared any pains to arrive at just conclusions on matters of such

importance, as those involved in the present suit. The said Experts have never hesitated, when necessary to be on the ground, either at five in the morning, or at ten at night, for the necessary observations of the tides, &c. The enquête on the stoppage of the mill wheel was next proceeded with, as authorised by the said judgment and the said Experts after having carrefully read over the voluminous record and noted every point of importance therein contained, a process, which of course, required many days of assiduous labour on their part, and after having freely discussed all the points at issue brought their best abilities to bear on the subject and maturely deliberated, are humbly of opinion that.

(*Answer to Clause No.* 1, *of interlocutory judgment.*)

The plan No. 1 annexed to this report, prepared by the Experts themselves from actual survey of the premises, is a correct representation of the present bed of the river Beauport as it appears in its normal state, in the summer season. As to the former bed of the Beauport river, if by that expression be meant the bed of the said river, immediately preceeding the constructions of the wharves on the Defendant's and Plaintiff's sides respectively, it can only be infered from the evidence, that formerly the waters of the river in freshet time, or some portion of those water, flowed around the island on which the wharf of 1852 is now built, to the north east side of the said island, through some passage channel or low ground then existing, and now almost totally obliterated by the wharves, and made earth on the Defendant's side. The existence of such a channel is most positively denied by some of the Defendant's witnesses, and as positively asserted by a larger array of names, on the Plaintiff's side; as may be seen by a reference to Appendix A of this report, or to the synopsis at the end of the same. But of this matter more anon, in our answer, to the 8th clause of the Interlocutory Judgment. As to the former bed of the river, or present channel on the Plaintiff's side, immediately preceeding the construction of his wharf, the evidence is very contradictory, as may be infered from a glance at the synopsis to Appendix C. It happens however that traces, still exist on the Plaintiff's side in and behind his wharf which in connection with a reference to Racey's plan of 1806 (Exhibit 10 filed by Racey in support of his evidence for the Defendant) will furnish a satisfactory solution of the question, when we come to treat of it in answer to the second paragraph of the 6th clause of the said Interlocutary. Now as to what the former bed of the river, may have been at a more remote period, the only evidence thereof is furnished by the said plan of 1806 and by another made in 1792. The plan of 1806, or that part of it which refers to the bed of the river at that time, has been transfered by the Experts, to plans No. 4 and 5 hereunto annexed, the first of which shows how the channel of 1806 was situated at that time, with regard to the present channel, the other, the relation of the two said channels, together with the high tide lines of 1806, to the position of the present buildings and wharves. The scales on those plans with a mere help of a pair of dividers, will enable the Honorable Judges to inform themselves on every point thereof. As to the natural and artificial obstructions to the flow of the waters in the river Beauport, it may be said that any curve in a river is a natural obstruction to the straight course which such river would take if such curve did not exist. There occurs a natural obstruction of that kind from X to Y, on our plan No. 1 hereunto annexed.

The point of land P at the foot of tail race and the small bank T V, behind the stone store may also be considered as slightly obstructing the natural flow of the water, and those obstructions are partly natural and partly artificial. For instance the point P is partly formed naturally by the river itself which takes a bend at about that point and causes an eddy in freshet time and an obstruction, which, to some extent, retards the flow of the water and causes it, on account of its diminished velocity to deposit materials previously held in suspension by the rapid current (see appendix H of this Report) stones of a certain size may also have been accumulated there from the same causes. The same point P may be considered artificial also as above stated, to a certain extent, in as much as it is partly formed by the materials taken from the tail race, the said materials being therein deposited by the same cause which in freshet time helps to throw up the accumulation at P as to the small bank T V behind the stone store, it must also be considered as partly natural and partly artificial. The said bank is composed, towards the top, of stones deposited there, at various times (see appendix G of this report) and of stones which have fallen there on occasions when part of the walls of the said store have been demolished and rebuilt. The under part of the said bank T V may be considered naturel inasmuch as it is asserted by one of the Defendant's own witnesses (No 4 of appendix G continued) that previous to the stones being thrown there, there was a natural bank wide enough for the workmen to stand on as on a scaffolding to rebuild the wall. It is true that several of the Defendant's witnesses say, that previously to the stones having been thrown behind the stone store, the river ran alongside (le long de) of the said store. The expression "alongside" is materially modified however by the same witnesses one of which (No 2 of the same appendix G continued) "Je ne sais pas si à l'endroit ou sont tombées les vidanges, il y avait de la terre séche." (Another No 3 of the same appendix) "J'ai seulement vu couler la riviere en arriere des vidanges" (outside of the stones etc.) A third (No 5 of the same appendix) "Je ne dis pas que ça faisait ça dans les basses eaux"

In the same way it may be inferred that the other witnesses, who say the tail race or river used to run alongside the store did not mean that the river absolutely touched the store, but that if ran near it, it will be demonstrated however in the sequel of the report, that it is of little importance as regards the points at issue in the present suit, whether or not there was any natural bank at T V, or at P, previous to the stones and rubbish, having been deposited, and accumulated thereon. As to the stones alleged to have been put along the foot of the Plaintiff's wharf, it matters little how they got there, and still less what effect they may have had or may still have upon the flow of the waters between the two wharves, their quantity being two insignificant to produce any effect capable of being appreciated. William Austin who surveyed the premises for the Defendant says (No 1 appendix G continued) " a portion might have escaped from between the timbers of the wharf and fallen to the base thereof. Those stones however unlike those at T V are hardly above the surface of the lowest summer waters, and are just similar to those which line the whole bed of the channel, from the bridge downwards and may possibly have been thrown there to protect the foot of the Plaintiff's wharf or brought down by freshets or from both causes combined. A great deal of evidence has been adduced by Defendant as to the stones behind the stone store and those at P the effect of such evidence being to distract attention from his wharf of 1852, which, as it will be shown hereafter, is the only real obstruction in the river. The wharf of 1852 is not an obstruction to the flow of the waters under ordinary circumstances nor for the best part of the year, but merely as will hereafter be shewn, during the combined action of ice and freshets in the spring of the year and only occasionally in the summer season, by freshets alone, when those last are great enough to produce an appreciable effect.

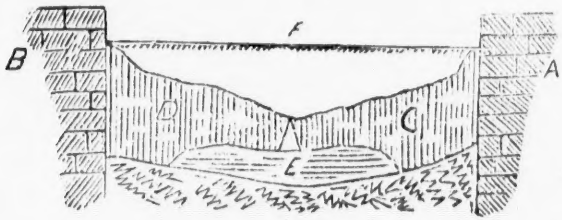
(*Answer to Clause No. 2 of Interlocutory Judgment.*)

The said Experts for the purpose of determining by a series of observations the sufficiency, or insufficiency of the passage or outlet for the flow of the water in the said river did particularly examine, the volume and course of the water coming from the interior during the spring floods, but unconnected with the ebb and flow of the tide, and to effect a part of this examination, they did select as much as possible the days and times of the day in which within the above mentioned extent, and during the spring floods, the level and course of the water was the least affected by the tide and when the greatest flow did pass through the arch and feeder of the mill, as well when the mill was working, as when it was not working. The said observations have forced upon the said Experts the conclusion that the " said outlet" supposed to mean the narrowest space, between the Defendant's wharf of 1852 and the stone store at the point Y or that still narrower at the point Z as that space existed at that time of building the said wharf of 1852, is sufficient under all ordinary circumstances, that is, so long as the river is in its normal state during the summer, fall and winter months, but absolutely insufficient during the spring freshets in connection with the action of the ice in the said outlet and upwards, towards the bridge and occasionally also during the other seasons of the year.

(*Answer to clause No 3 of Interlocutary.*)

The insufficiency above mentioned is in our opinion evidently attributable, to the wharf erected by the Defendant in 1852, and complained of in the Plaintiff's declaration. The said insufficiency can in no way depend on the Plaintiff's wharf as even if the said wharf were entirely removed it could in no way benefit the outlet at Y, between the wharf of 1852, and the stone store. Neither can the stones complained of by the Defendant as having been placed behind the stone store nor the bank of stones and rubbish at P, nor the alleged alteration in the direction of the lower part of the tail race enhance the said insufficiency in any way worth mentioning. The removal of the stones and bank of V, T, would increase the outlet at Y, by about one 18th to one 20th of the sectional area of the said outlet that is to say, the said stones at V, T, have the effect in freshet time of keeping the surface of the water about one eighteenth part higher than it would be if those stones were not there. Four inches of extra depth of water would therefore be the greatest effect attributable to the existence of the stones above mentioned. Now, when it is asserted by us that the effect of those stones does not in any way worth mentioning augment the insufficiency of the said outlet it is because when the mill wheel is submerged in water to such an extent as to prevent it from working, a few inches of submersion more a less can neither aggravate nor diminish the effect produced by the freshet and ice on any appreciable degree. As to the extent of the insufficiency of the said outlet at Y, it is a matter of some difficulty to calculate. Were there nothing but the water of the river to consider, it would be an easy matter to give a satisfactory answer to this question, as the problem would admit of a ready solution by mere consideration of the sectional area of the said outlet in conjunction with the velocity of the water flowing thorugh it. The solution of the proposed problem requires, the ice to be taken into consideration as one of the elements of computation ; nor can anything more than a mere approximation be arrived at, even then. The Honorable Judges in writing the interlocutory do not seem to have considered the obstruction complained of by the Plaintiff in its relation to the action of the ice during the

spring as no mention of the word occurs in the judgment, and yet the insufficiency of the outlet mainly depends, and for the most time, on such action of the ice. To make this matter clear and evident it must be understood that the surface of the channel water in the outlet freezes over during the cold months of the winter, and forms a bridge of ice over it. The ice bridge thus formed thickens with the snow that falls upon it. The high tides rise over the said ice bridge instead of under it, the ice being too tightly jammed between the wharves, to float or rise with the tide. The snow above the ice becoming thereby impregnated with water, and freezing again adds, to the thickness of the ice bridge and to its solidity: A space remaining constantly below it for the outflow of the water from the mill-race, for at that season of the year there being but water enough for one or two run of stones and none to spare, it is all taken into the mill, and passed out through the tail-race, very little if any coming down the natural channel through the culvert or arch under the turnpike road. When a heavy rain or thaw occurs as sometimes happens even in February, it will be understood that the water coming down the river Beauport, not having space enough to flow off through the contracted passage under the ice in the outlet at Y, must of necessity run over the ice in the said outlet (this is proved by the deposits of sand and gravel to be found on the surface of the ice as we ourselves have witnessed in several occasions) which at that season is too firm to yield in any way to any pressure from beneath which the freshet and water might exercise on it. If then the said ice in the outlet be conceived to be several feet in thickness, which it always is about that time of the year, it will readily be apprehended that any freshet water from rain or soft weather at that season must pass over the ice, in the outlet, and thereby be considerably more elevated than it would be if no ice existed: the extra elevation of the surface of the water at such time being equal to the thickness of the ice, it has to pass over. On such an occasion, as that above described, which generally happens once or more during each year, it will be conceived that the mill wheel is likely to be submerged in proportion to the depth of the water so flowing over the ice in the outlet. For instance with a thickness of only three feet of ice and snow in the outlet, the very least that can be allowed, and with a depth of three feet of freshet water flowing over the said ice the water wheel would be submerged at least two feet, proportionally more according to an augmented thickness of ice and extra depth of water flowing over it. When the soft weather comes on in the spring, say about the month of March or so, the ice bridge in the outlet Y is worked upon by the sun, from above, and from beneath, it is worn away and melted by the warmer waters, which at that season begin to flow from the interior of the country. The bridge of ice thereby becomes gradually thinner and weaker towards the centre and begins to sink at that point after having cracked along its axial line. In this state it might be supposed that the next high tide or freshet would float it, but this does not occur till later in the season. The two halves of the ice bridge though sinking towards the centre, still adhere firmly to the adjoining wharves and the interstice or fissure along the centre, becomes filled with water and freezes again during the night.



It will now be conceived that under such circumstances, the ice bridge must be even more difficult to raise or float, than in its normal condition since the two halves thereof one then absolutely in the position of an inverted arch or of two edges fixed at their bases and abutting against each other, at their edges, as indicated in the diagram in the margin, where D C represents the two halves of the ice bridge E, the water running beneath it, "F" the freshet water running over it, and A B the two wharves of Plaintiff and the Defendant. Nor is the diagram drawn from mere theory, but was sketched on the premises on or about the tenth of March last. The extent of the insufficiency of the outlet, may now be considered in the following light. If the wharf of 1852 did not exist, the ice in the outlet at Y and down to Z, having no vertical wall to abut against, could easily be floated by the freshet or tide water,

which would then pass under it and raise it, as it could not then be jammed in as now happens. It would be mere conjecture to state to what distance the wharf of 1852, should be removed towards the Defendant's side to prevent the above jam of ice from occuring: but it would probably require to be put back at least fifty feet for the purpose, the safest plan however being undoubtedly to remove it altogether. It is next however to be established how often, during the year the above named insufficiency shall occur. It is impossible to establish with much precision the frequency and duration of the said insufficiency during the year. All that can be said on that point, is that, there is evidence of the mill having been stopped from one to three days in succession since the wharf of 1852 was built. (See appendix O of this report.) A circumstance which in Appendix N is asserted by 9 witnesses never to have occured previous to the erection of the said wharf, and that the insufficiency of the outlet at Y is likely to occur more or less from or before the middle of March to the beginning of May in each year and occasionally during the remaining seasons. It must not be supposed that insufficiency always occurs in the precise way indicated in the description and diagram above mentioned. On the contrary it may happen and has happened to our knowledge and from our personal observation when the ice has been almost altogether broken up but jammed together in such way as to form a barrier to the passage of the water. The cause of the insufficiency as already stated *can be none other than the wharf of 1852 built by the Defendant.* The precise position of that obstacle is laid down on our plan No. 1. The obstacles on the Plaintiff's side, and their relative importance have already been commented on, in our answer to the first clause of the interlocutary in answering which, it was impossible for us not to anticipate to some extent our answers to particular paragraphs of the subsequent clauses.

(*Answer to Clause No. 4 of Interlocutory.*)

The obstructions above mentioned cause a rise of the water in freshet time independently of the tide, within that part of the extent above mentioned above the points X and Y respectively in the plan marked X (Ware's plan) as also indicated by the same letters on our plan No. 1 hereunto annexed. When such rise of the water does occur, it of course increases to some extent when the tide water meets the river water during the spring floods. That increase escapes and flows off in the same way, of necessity and through the same outlet as the river water, and the water so raised has and must have the effect alone as well as in addition to the tide water of stopping the working of the wheel of the Plaintiff's mill by submerging it beyond its usual exposure to the tide previous to the said obstructions; and like observations, and examinations, have also been made at periods, days, and hours of both the high and spring tides.

(*Answer to Clause No. 5 of Interlocutory.*)

From the above mentioned causes there is a difference in the usual stoppage of the wheel. The nature of the stoppage (if we well understand what is meant by the question) is that the mill wheel is so stopped from being submerged in water beyond a certain depth or exposure, after which the machinery lags two much to do its work efficiently and has finally to be stopped to prevent any injury occuring to the machinery, and to the wheel by driving through back water. The excess of the stoppage, as compared with the stoppage produced by natural causes may be inferred directly from what has already been said in answer to clause No. 3 of the interlocutory; for since the insufficiency of the passage at Y was therein considered, and established only inasmuch as it caused the waters to rise enough to flood the wheel beyond its usual exposure, it follows as a contrary proposition that when such insufficiency did or is likely to occur so did the mill wheel stop and is likely to stop under similar circumstances. To separate the effect produced by tide waters from that produced by freshets, and give to each its relative proportion of importance is almost impossible to perform. When it is stated however from our own observations, stoppages have occurred independent of the tides, and at hours of the day at which the tide must have been low, and that stoppages of from one to three days duration have also occurred as asserted, in the evidence extracts from which are given in appendix O, and if they have not occurred, may occur and are likely to occur for days together from about the fifteenth of March to the beginning of May and occasionally also during the remaining seasons of the year. In the case of freshets; while on the other hand the usual stoppage from high tides alone never exceeds six hours on an average during any one day, and that circumstance occurs only for a few days in a month. The Honorable Judges will form a good idea themselves of the total probable amount of extra stoppage during any one year.

(*Answer to Clause No 6 of Interlocutory.*)

As elements for our conclusions we did carefully and particularly examine and ascertain the level or fall of the water between the lower or under portion of the mill wheel and the level of the water of the river opposite the point Y, in our plan, together with the lesser or greater difference of level between the lowest point of the wheel and the top or surface of the wharves of both parties. The result of our examination is indicated in our plan

No 1 at section through the water wheel and tail-race down the point Y, by which it appears that the surface of the channel water at Y is in its normal state, about four feet and four inches before the underside of the mill wheel. The top of the Plaintiff's wharf opposite to the point Z (for none exist opposite the point Y which faces the stone store) is 50 feet above the underside of the said mill wheel.

The position of the base of the wharves of both parties on each side in their full extent is shewn, on our plan No 1 and the relation of the said position to the elevation of the land on which they have been erected is fully indicated by the several sections on the same plan No. 1. The channel water is shown in the several sections as it exists in its normal condition in the summer season. The relation required by the interlocutory, of the wharves of both parties, to the water of the river at low medium or high water will admit of two answers as we cannot say whether by river is meant in this case, the river Beauport or the river St. Charles or the St. Lawrence. First. As to the river Beauport, low water is indicated by the normal state of the channel water above mentioned. As to what the medium and high water of the river Beauport, may be, admit of much difference of opinion. M. Edward Henderson in extract No 6, Appendix Q, asserts that on one occasion the freshet water rose to 7 or 8 feet in the river Beauport. A depth of from 5 to 7 feet might then perhaps be taken as high water in the Beauport river and 3 to 5 feet as medium water. Now as to the relation of the base of the said wharves to low medium, and high water in the St. Lawrence, it will merely be requisite to state that ordinary high tides reaches about as far as the wooden store more or less. The height to which ordinary high tide rises being about 14 feet will therefore show that the base of the Plaintiff's wharf at O and of the Defendant's wharves at Z and B are respectively, (there being but little difference between the respective levels of those points) about 14 feet above low water in the St. Lawrence, a result of which we also arrived by levelling down to St. Lawrence low water mark. Judging from present appearances and aided by the evidence of some of the witnesses, it would appear that the Defendant's wharf of 1852 had been built into deep water from little below X down to angle next below Y, since (there is at present from 2 to 3 feet depth of water along it between those points. The men who built the said wharf however, state in their evidence that it was not built into the channel but on the bank thereof. It is barely possible that the foot of the bank, on which the said wharf is stated to have been built, may have been gradually abraded and washed away by the current since 1852. All that is important in the evidence bearing on the position of the said wharf of 1852 in relation to the bank between X and Z on which it is built will be found in "appendix B continued." Nothing satisfactory can be learnt as to the position of the Plaintiff's wharf with regard to the bank on which it is built, the evidence on that point being two contradictory. It happens however as was already stated that the top of the original bank on the Plaintiff's side is still visible and proves if anything, that the Plaintiff's wharf is built inside of the foot of the original slope of the bank on his side. The top of the slope or old bank is at nine feet from the outer face of the said wharf and the wharf itself being about ten feet high would make the slope average about one to one or at an angle of 45°. Now it is well known that the natural slope of ordinary earth is as flat as ½ to 1, tending to prove that the foot of the bank or slope on the Plaintiff's side formerly extended about 4 or 5 feet beyond the present wharf, the presumption therefore being that the Plaintiff's wharf from the stone store down to within some feet of the point O is built more inland than it might have been. The Experts must take the liberty to refer the Honorable Judges to many important remarks which they have thought it their duty to offer at the end of this report as to the conflicting evidence adduced by the parties on some of the most important points at issue with the view of explaining the different circumstances under which the several witnesses may have seen the premises previous to giving evidence. The additional elevation of the Defendant's wharf of 1852 as compared with that of the bank it is built on, has contributed to the effect already mentioned and explained in our answer to clause No. 3 of the judgment inasmuch as it is considered that if that wharf did not exist the surplus waters in freshet time would flow over the bank, on which, or along the slope of which, the said wharf is built from X to Y, and have ample space to escape without any impediment to the mill wheel. The Experts having asserted in clause No 3, that the wharf is an obstruction mostly on account of the action of the ice in the spring freshets, will now proceed to shew how the same obstruction could not occur if the wharf were removed. The bank of the channel at Y being about three feet and a half, above the surface of channel water, it might be supposed that the ice bridge over the said channel would be formed, as it now forms between the wharf of 1852, and the stone store and Plaintiff's wharf. It is probable however that it would not be so since the ice not having a vertical surface to abut against could easily be raised and floated by the water which it would certainly do in all cases (it being a buoyant substance) when at liberty to do so. But even if the ice could be so jamened in the outlet and the freshet water, made to flow over it, it will be directly understood that the freshet water having then a much under space to flow over could never obtain any thing like the depth to which it now accumulates in the present narrow outlet.

We cannot say that on the side of the Defendant and in the rear of and within his wharf erected in 1852, any made-earth does appear so as to prevent us at once from

observing the state of the place as it would be. It is necessary however to remark that made-earth extends to a few feet below the point X within the said wharf. It is also possible (we cannot say probable) that some earth may have been deposited immediately in the rear of the said wharf of 1852, which would give the bank, on which the said wharf is built, the appearence of being somewhat higher than at the time the wharf was built. There appears, immediately behind the wharf, and between X and Y, a certain superelevation as if composed of the earth removed from the site occupied by the wharf, and thrown up behind it. This superelevation appears to us to be about a foot more or less in thickness. The appearence of the bank, it must be said, looks as much as possible in its natural or normal state, that is from the point Z up to within a few feet of the point X, 3.—The precise position of the debris or stones alleged to have been placed by the hand of man, at the back of the Plaintiff's stone store, and wharf, is shewn on the plan No. 1, and as to their action upon the effects by us observed, our answer has necessarily been fully anticipated and given in Clause No. 3. 4.—The respective heights of the top of the wharves and the level of the water at high tides is fully given by the different sections in our plan No. 1. 5th.—The Defendant's wharf of 1852 is generally overflowed at all high tides. That of the Plaintiff is overflowed only during high spring tides except towards the point O, where it is lower. Most of the wharves, on both sides, follow the natural slope of the river Beauport, and are or may be more or less overflowed by the high tides at different parts thereof. It has already been said that ordinary high tides do not rise much beyond the point O. As to how often and how long the wharves are overflowed or are likely so to be, tides are so very irregular in the height to which they rise, that it is hardly possible to come to a correct conclusion. What are called spring tides are known to occur at every new and full moon. Those tides occur twice a day, during four or five days. It might therefore be stated that the Defendant's wharf of 1852 as well as some part of the Plaintiff's wharf towards the point O, and the whole of the low ground in the rear of the said wharf of 1852 are subject to be flooded more or less for eight or ten days during each month or during from 16 to 20 tides more or less. As to the length of time for which wharf may be flooded, the height of water shewn upon it, in the respective section indicating such wharf will give an easy solution, by merely allowing from fifteen to twenty minutes for every foot of rise or fall above such wharves. For instance in the section through point Y on our plan No.1, where a depth of four feet of water is shewn during a very high tide, it is probable that point would be flooded altogether for about two hours and more or less evidently according to the height of any particular tide. The manner in which the tide water would have covered the land, on which the Defendant's wharf is erected, is absolutely the same as under present circumstances, if we well understood the meaning of the Question. The annexed plan No. 7 shews a bird's eye view of the appearance of the premises in dispute during an ordinary high tide and before the wharf of 1852 is flooded, at which time the said wharf becomes invisible excepts as a breaker beneath the surface.

(*Answer to Clause No. 7 of Interlocutory*)

The Experts having examined by comparison and from scientific data the sectional area of the present outlet at the point Y and down to Z on the one hand, and the combined sectional areas of the mill race and arch or culvert under the bridge of the turnpike road on the other hand, are of opinion that under all ordinary circumstances and even during small freshet unaccompanied by the presence of ice in the river, the said outlet at Y is sufficient for the purpose of discharging all the water coming down the Beauport river and passing partly through the mill and mill race, and partly through the said arch of the bridge. It will be observed on the "sectional bridge" that the archway or culvert is now much higher than it was at the time we made the survey in 1857. The conclusions above arrived at are true as well when the mill is working, as when it is not working.

(*Answer to Clause No. 8 of Interlocutory.*)

In our opinion no canal, channel or passage existed in the year 1852, at the time of the construction of the Defendent's wharf at the place of its erection from X down to Z (the trees and stumps of trees existed all along the bank behind the wharf from X to Y being pretty good evidence of themselves of the truth of this assertion) and if such a channel passage or canal did exist, a circumstance of which we can have no doubt in view of the evidence adduced on the subject (Appendix A) it must so have existed at about the point X or a little above that point. Brown's protest against Gugy building his wharf of 1851 and the reasons there setforth against the erection of the said wharf (Extract No. 17 Appendix Q) render it more than probable that the former channel was cut of and obliterated, for the most part by the said wharf of 1851. The channel marked out on Ware's plan (Plaintiff's exhibit X) by Michael Scott who formerly had the mill and must have known the property well if prolonged would cut the wharf of 1851 a good many feet above the point X. It is true that most of the witnesses, when called upon to trace out on the said plan, (Plaintiff's exhibit X) the supposed eastern channel have each of them traced one in a different direction, tending to shew as the Defendant has argued that the fact of the witnesses not agreeing as to where the supposed channel was, proves there, to have never been one; but

when things are viewed in a more disinterested light it is easy enough to explain all discrepancies. Louis Auger, for instance, the Plaintiff's miller, who is an old and respectable man, and has known the mill and premises for these last 30 years or more, has traced out on the said plan a channel as having existed somewhere between X and Y previous to the wharf of 1852. Now as a matter of fact no such channel existed at the point so traced out by Auger. How then was Auger's positive statement of the former existence of a channel to be reconciled with the impossible direction by him marked out for the same on the said plan. On one occasion that we were at the mill we requested Auger to point out to us on the ground the same channel that he had pointed out and traced some years previously to the said plan during his examination as a witness. Auger immediately complied with our request by walking over the ground where the supposed channel had formerly existed, but not at all where he had previously traced it out on the said plan. The direction then indicated by Auger was from near the point X, and a little above that point in a curved direction down towards B. Auger knew perfectly and evidently what he meant while tracing out his channel on the ground, and the discrepancy must of course be explained on the assumption that Auger (an illiterate man in every sense of the word) while pointing out his channel on the plan supposed himself to be doing so as nearly as possible in the direction he subsequently traced out on the ground. It is evident also that in the same way may all the other channels be explained by exposing the witnesses who traced them not to know enough of a plan or representation of any thing on paper to be capable of pointing out exactly on any such plan any particular point upon the ground so representated by the said plan. It requires a knowledge of the scale to which a plan is drawn and of the real proportion which the graphic representation of an object on paper bears to the original on the ground to be able to trace anything on such plan in its due proportion and as a proof that the witnesses who traced out directions for channels on the said plan (Exhibit X) knew little or nothing at the time of the scale of the said plan or of the relative proportion of the objects thereon delineated, some of them, though they distinctly say in their evidence that the eastern channel went around the island that formerly existed were unable to render their ideas in a compatible way on paper, since the islands, so traced out by them, in no way agree with the channel indicated by the same men. Others after being asked as to the dimensions of the island and then requested to trace it out on the plan have indicated the said island in a way bearing not the least resemblance nor proportion to the verbal description given and dimensions assigned, shewing clearly as above stated, that the fact of no channel ever having existed in the precise position, pointed out by the witnesses, is no proof that such a channel did not exist elsewhere. The naturel indications though slight, of the existence of the channel at some former time are still to be seen, and it will be remarked by an inspection of the section, through Y and Z, that there is a depression of the ground along the wharf A B, and the bank of stones B Q X. If in connection with those naturel indications it be surmised why the wharf A B was built in its present position and direction, instead of running up from A towards Z the Honorable Judges will (aided by the evidence *en record*, or extracts therefrom, by us selected and to be found in Appendix A) beable to form their opinion on the point at issue. Now as to whether the water of the river flowed through that former or north east channel, it may be said and substantiated by the evidence in Appendix A above mentioned, that, that channel existed as a channel only in freshet time. Let it be understood that in the normal state of the river Beauport, in summer and winter, there is but enough water, for the use of the mill. That water therefore is made to pass altogether through the mill, and out by the mill race down the western or present channel, which last itself, has been called the mill race or "*décharge du moulin*" by some of the witnesses. The Honorable Judges will now understand that for the best part of the year no water may have passed through the north east channel and that to any of the witnesses who had seen it under such circumstances it would have appeared as not being a channel at all but merely as some of them term it a "baisseur." The protest of Brown against Gugy already alluded to in reference to the wharf built in 1851 and expressions in the evidence to the effect that "*l'on s'est aperçu que le quai de* 1851 *commençait déjà à gêner*" would tend to prove and the result of our observations indicates, that the wharf of 1851 was principally instrumental in obliterating the so called N. E. channel. The damage done at that time however had it gone no further was apparently not deemed great enough to be complained of by the Plaintiff otherwise than by protest. In fact, the mere cutting off of the eastern channel, unjustifiable as it may have been, could never have obstructed the working of the mill to any great extent, so long as there remained free space for the freshet water, to flow over the low ground now enclosed by the wharf of 1852 so that it is that wharf which in reality has caused the damage complained of. The said wharf of 1852 was erected on high ground that is, on ground high in comparison to the bed of the present channel, but not so high as not be overflowed by freshets and by all the high tides of the first and third quarters of the moon. In answer to the remaining part of this clause, as to the action of the said wharf in forming an eddy above it and causing accumulations of gravel etc., in the tail race, we take the liberty to refer the Honorable Judges to our remarks on the same subject in anwer to clause No 3 of the Interlocutory Judgment since, if we did answer these questions at this part of our report it would be but a mere repetition of what we have already said in answer to the said clause No. 3.

(*Answer to Clause No. 9 of Interlocutory.*)

The effect of the course of the water in the existing state of the river in relation to the degradations of the river banks may be considered in the following light. The flow of the water from the bridge down against the wharf of 1852 may to a certain extent have the effect of eating away the bank beneath it as we have already noticed in the former part of this report. The said wharf however is well clapboarded, down to the bed of the river and not much damage can accrue to the Defendant from that cause. It appears rather probable that the course of the channel between X and Y was more concave towards the Defendant's side, previous to the erection of his wharf between those points in 1852, for the current seems to strike right into the wharf between those two points as if it would go straight on if the said wharf were not there. What renders this probable is the great depth of water alongside the said wharf between X and Y as compared with the other parts of the channel tending to show that the wharf of 1852, was built into the channel at that part of its length. It is possible, however, as already stated in answer to clause No. 3, that the bank on which the said wharf may have been erected has been, to some extent eaten away or abraded by the current at that spot, since the erection of the said wharf, and the Defendant is probably not wrong in asserting that the point of stones and rubbish P gradually augmented from year to year by the cleanings out from the tail race, which are from time to time deposited thereon, may have been and still be instrumental in driving the current towards his (the Defandant's) wharf and by so doing give the wharf itself the appearance of having encroached upon present channel, between X and Y, to a greater distance, than it has done. The current after deflecting at X or a little below X is next directed towards the stone store, where it impringes against the bank T V and necessarily eats away the earthly particles of the said bank, laying bare the stones of which it is partly composed. In the remainder of the channel from Y to Z and below Z down to O the degradations and abrasion of the bank are of so slight a nature as to be unworthy of note. We cannot look upon the evidence adduced by the Defendant in this cause, relatively, to the degradations of the banks on his side of the river caused, as he asserts, by the Plaintiff's wharf and the stones at the foot of the said wharf and behind the stone store, in any other light, than that of a desire on his part (a very natural and plausible one of course) to distract the attention of the Court and of the Experts from the real and only important obstruction in the river Beauport, to a few stones producing an effect upon the flow of the river of no relative importance whatsoever, as already stated in our answer to clause 3 of the judgment.

(*Answer to clause No. 10, of Interlocutory.*)

An examination of the several plans produced and filed by the parties, and compared with the state of the locality or with our plan No. 1 which represents what the state of the locality was in 1857 and 1858, and is still, led us to make as thereto required by the judgment, the following remarks:

First as to "Ware's plan, Plaintiff's Exhibit X." The most noticeable feature in this plan as compared with the present state of the locality is the distance between the Defendant's wharf of 1852, and the Plaintiff's wharf at the point Z. It appears by Ware's plan aforesaid, that in April, 1853, when the premises were surveyed the distance between the said wharves at Z was about twenty one feet english measure. When Fletcher surveyed the ground in September of the same year, the distance found by him was but nineteen feet and two inches (equal to eighteen feet french, given on his plan, Defendant's Exhibit No. 14) when we surveyed the premises in 1858, we found the distance at the same point, to be but seventeen feet, at the base of the wharf and but fifteen and a-half feet at the top of the same. It therefore appears that from the effect of the ice within the said wharf of 1852 or from the wearing away of the bank, beneath the wharf at Z, or by those two causes combined, the passage between the two wharves at the said point Z has been reduced by several feet, say five feet and a half according to Fletcher and Austin's plans. The effect we consider is mainly due to the ice, between the inside of the wharf of 1852, and the Defendants bank of stones at (B Q X) and wharf B A. The action of the ice may be considered to take place as follows. The sheet of ice between Z and B on being forced up every month or even twice a month and for several tides in succession at every new and full moon, and necessarily fractured by the process on account of the resistance at the edges by friction against the said wharves; the water in the fissures feezes again as the tide ebbs, and the expansion so produced (for water unlike all other fluids, and by a kind dispensation of Providence expands in becoming a solid) produces its effect in making room for itself by pushing before it the objects which offer the least resistance which of course is the case with the wharf of 1852, as compared with that of more solid construction at A. B. The effect incident on a single operation of the kind mentioned may be but the fraction of an inch: yet when repeated twice a day for several days in each month, and for several months in each year, and multiplied again by a series of years (from 1853 to 1859), it can be understood how units may be formed, and many of them by the repeated addition of so many fractions.—It might be urged that the ice between Z and the opposite wharf should have a tendency to act upon the wharf of

1852 in a contrary direction but it has already been remarked that for most of the winter the ice is there jamned in and unable to rise with the tides and if it did, its effect on the wharf of 1852 would only be to that of the ice within the said wharf in the proportion of the respective breadths of both. Another circumstance which gives an undue influence to the ice within the wharf is that it remains there and acts as above mentioned for several weeks after that, between the wharves is broken up and partly dissolved. It may be proper to state here that it has occurred to the Defendant lately that his wharf is in reality a benefit to the Plaintiff rather than the contrary, since as he says it causes the ice in the outlet to break up *six weeks* earlier than it would do. Now to say noting of the six weeks above mentioned it is an undoubted fact that ice always breaks up earlier in the vicinity of wharves than it does elsewhere. The cause is the non conducting powers of the wood the wharves are built of, and the reflection of the suns rays from the wharves to the ice, and general concentration of heat in any inclosed and unexposed place. We must freely admit the benefit thereby conferred on the Plaintiff to be incalculable though not so much on account of its great importance as of the contrary quality. It might probably under the circumstances of the cases be made out an injury to the Plaintiff rather than a benefit to him as it is problematical whether it would not be better for the ice to remain stationary in the outlet until the lower ice had moved away, than to break up and cause jams as it has done and is likely to do under similar circumstances.—The channel and tail-race as laid down in said Plaintiff's exhibit X are not at all correct nor do they purport to be so and we cannot help remarking at this juncture that an immense mass of evidence has been adduced by the Defendant in this case to prove Ware's plan to be incorrect, and worthless: for let it be remembered that Ware surveyed the premises on the 7th of April, at a season when the river must have been still covered with ice as he himself states in his evidence (extract 9 appendix P). Let it be also remembered that the title of the said plan is. "Plan of the Beauport mills exhibiting certain wharves erected by Mr. Gugy surveyed 9th April, 1853," and that Ware when saying in his evidence that the plan exhibited a *correct* view of the locality could only be supposed to mean that the plan was correct inasmuch as it purported to be by its title. Messrs. Fletcher and Austin both state that Ware's plan is incorrect inasmuch as among other things the arch at the bridge is represented to be sixteen feet while it is in reality but twelve feet seven inches. Some people rather unfortunately take a pleasure in finding an error in the work of a *confrère* of the same profession and are too quick at coming to conclusions often erroneous. Now we do state as a fact that the sixteen feet at the bridge on Ware's plan do not indicate nor are they intended to indicate the width of the arch but the distance between the wharves of the parties at that point and if Messrs. Fletcher and Austin had been a little more careful in their examination of Ware's plan they would have made themselves aware of their error; there being an unmistakeable proof of the fact on the said plan even though spectacles were required to detect it.

Secondly.—The only remark we should have made with regard to Fletcher's plan (Defendant's Exhibit 14) is that already alluded to in connection with the distance between the wharves at Z. It is however important to notice that the height of the wharf on the inside at near Z is much greater than written on Fletcher's plan. Probably the height in question was taken higher up towards Y and written too far down on the plan.—The section through Z on our plan No. 1, shews how very low the bank is at that point.

Thirdly.—As to Austin's plan (Exhibit No. 10 of Deft.) the only remark worth making independently of that already made as to the distance at Z between the two wharves is that the point P at the time Austin surveyed it does not appear to have been a bank of the present magnitude but a mere reef a little above the surface and separated from the main land by a small channel; between the main channel and the tail race. That point P is now joined to the mainland in the normal state of the water in the channel and is as already explained about two feet above the level of the water in the channel; tending to prove the conclusion arrived at by the Experts in our answer to the 3rd clause of the interlocutory as to the said point P being formed partly of the *débris* washed into the tail-race by freshets and then cleaned out of it by hand of man and thrown upon the said bank. It will not be out of place here to remark on the evidence rendered by two of the Defendant's witnesses ("Extracts No. 2 and 5 of appendix H continued") as to the formation of the point P one of the said witnesses Ignace Moreney says that the point P is "*une espece de mur en pierre sèche de deux pieds de haut et de quarante pieds de long.*" Martin the other witness made use of exactly the same expressions and of the identical dimensions "*deux pieds de haut et de quarante pieds de long*" (strange coincidence) and yet such perfect agreement of description of a thing so undefined in shape can be explained on the principle of one witness everhearing and repeating the words of another. The Defendant in his remarks to us, and in a remark made by him in Martin's or Moreney's evidence tries to explain away the wall or bulwark alluded to by his witnesses by saying that the said wall had existed but had been most materially altered since its formation unfortunately however (a circumstance to which the Defendant did not pay sufficient attention) his man Moreney says "*Le mur dont j'ai parlé existe actuellement, je l'ai vu ce matin*" or words to that effect. We lay some stress on this matter for having gon out to the premises a few days after Moreney's evidence and proceeded to the point P to survey the said "*mur en pierre sèche*" and finding no trace the

most remote of any thing of the kind we sent for Morency to point it out to us. (The Defendant's object in making it appear that the bank of stones and earth at P is built like a wall or bulwark is to show that the Plaintiff caused it to be built for the express purpose of driving the current against his wharf so as to undermine it and give it the appearence which it realy has at present of having encroached upon the present channel. What we deny is that the stones are in any way arranged in the manner of a wall as stated by Morency and Martin. They appear on the contrary to have merely been thrown there from the tail race without any attempt at special arrangement. The man came down and when asked to point out the wall the existence of which he had spoken of a few days before as of a fact he had witnessed the very same day that he had given his evidence he pointed everywhere and nowhere to the wall and to the 40 feet inlength thereof in utter discomfiture.

We shall have to allude again to these two witnesses in connection with some evidence rendered by them on another subject. To make an end of the point P, it will be remembered that in our answer to Clause 3, we stated the said point to be partly formed by the action of the river itself; we will now add that there are evidences of a natural bank of some years formation under the loose stones accumulated over it. The said bank is above the level of the channel water and since Austin in his plan shews it seperated from the main land by water, it may be explained by supposing him to have sketched it at a time, when the tide had not yet sufficiently left it or at a time when the river water was a little higher than when we surveyed it. Some evidence of an alteration in the direction of the tail-race alluded to by several of the Defendant's witnesses might have been obtained from Austin and Fletcher's plans, had they been correctly made in respect to the true direction of the said tail-race. The upper part of the tail-race however which has certainly not been altered since they surveyed it, is so incorrectly laid down on their plans (they having shewed it concave when it should be convex) that no more reliance can be placed on the lower part of the said tail-race, and no proof elicited as to its having been changed within the few years past.

Fourthly.—Deft's Exhibit fifteen is a mere copy of that made by Ware (Exhibit X)

Fifthly.—Deft's Exhibit twelve is also but a mere copy of Fletcher's plan and therefore calls for no remarks.

Sixthly.—Defendant's Exhibit, H. is a rough copy of Austin's plan, made at the request of the Defendant, to show not at all correctly but rather in a way to throw as much discredit as possible on the Plaintiff's witnesses, the different channels testified to by them or more correctly the different directions assigned by the witnesses for the supposed eastern channel.

Seventhly.—Plaintiff's exhibit H. K; Larue has transferred to his plan the channels and high tide lines of McCarthy's plan of 1792. The transfer is not correctly made as it shews that part of the channel of 1792 which is in a line with the south side of the distillery building to be about twenty feet nearer to the Defendant's side than it should be. The said transfer if correctly laid down would also shew the N. E. corner of the stone store to encroach about 5 feet upon what the western channel of McCarthy's plan then was, as may be seen by referring to our plans No. 2 and 6 annexed to this report. The tail-race as shewn on this exhibit was evidently sketched in a very careless way as it bears no resemblance in point of shape nor in point of dimensions to what it really is. The bank of stones and filling in between the points B and X and around through Q as shewn on this exhibit, as well as on Fletcher's and Austin's plans has evidently been advanced nearer towards X and even several feet past that point since those plans were made.

Eighthly.—Plaintiff's exhibit H, copy of a plan made in 1792 by Jeremiah McCarthy surveyor. This plan will be more fully noticed in connection with Nos. 2 and 6 of the plans annexed to this report. The pencil lines are ours and were used by us in tranferring the plan on an enlarged scale to a plan of the locality as it at present exists, with a view of comparing the present wharves and buildings with the channels and high tide lines etc., of that period.

Ninthly.—Exhibits No. 10, filed by John Racey Esq., in support of his evidence on part of the Defendant. This plan has also been transferred by us to another plan of the premises as they now are and will be more fully noticed anon.

Tenthly.—As to the old plan of 1785 (Exhibit 4 of Defendant) it is and purports to be but a mere sketch drawn on the ground without instruments of any kind and is useless except as a mere approximation. Proceed we now to the consideration and description of the plans annexed to and forming part of this report. Plan No. 1 is that of the premises as they now are and were at the time of the survey thereof during the summers of 1857 and 1858. The same letters have been used on all our plans to denote the same parts and they are also the same as those on the plans of record, the several exhibits above described. The wharf X. Y. Z. is the wharf built in 1852 by the Defendant and forms the basis of the institution of the present action, A B. is an old wharf on the Defendants side built about 25 years ago. B. Q. X. is a bank of stones terminating the made-ground on the Defendant's side (see extracts 7 and 8 appendix P.) All the ground in rear of the Defendant's wharves from the bridge of the turnpike road down to A and thence down-

wards is made-ground, and is written down as such in the several sections of the plan No. 1 aforesaid. The space covered by the made-ground is shewn to have been beach or low and marshy land previous to its having been filled in as above mentioned and converted as it now is into arable land. The evidence of such low ground or beach having existed is distinctly pointed out in McCarthy's plan of 1792, and on Bouchettes (Racey's) plan of 1806 and the Honorable Judges will immediately see by a glance at the high tide lines of those two plans as transfered to our plans Nos. 5 and 6, what the extent of the made-ground is on the Defendant's side see also extracts 7 and 8 Appendix P.—It will be remarked that the high tide lines of Bouchette and McCarthy agree as nearly as can be notwithstanding that fourteen years had elapsed between the two surveys. The evidence of the above is more graphically demonstrated on Bouchette's plan where the sienna colour clearly indicates all the land so tinted to have been a sort of beach flooded at all high tides. While writing of Bouchette's plan it may not be out of place here to state that what may infered from the evidence of record (see Appendix A) as to the former existence of a north east channel or of some low ground to the eastward of a certain island opposite the stone store is fully corroborated by an inspection of that plan whereon is indicated a sort of channel extending up from where the point B would occur on that plan to within a short distance of the turnpike road. The Defendant naturally enough, of course, has tried to prove that trees existed all along the western side of the island or promontory W on Bouchette's plan from the letter R in the word river to the turnpike road but his pretensions in this respect cannot be considered as correct with regard to the way the representation of such trees is given on Bouchette's plan, in fact the little greenish etchings or dots on the said plan can not be taken to represent anything more than a sort of vegetation brushwood or willows of small stature that would spring up in a few years and grow as they still do in the premises on low and marshy ground, flooded by every high tide from the St. Lawrence.—The low space therefore on Bouchette's plan though apparantly not fully carried out may have been and probably was even at the point U low enough for any freshet water to pass over it and down the direction U. B. to join the channel water lower down the river. It will be perceived however that the pretended site of the N. E. channel somewhere from X or a little above X down towards B does not quite agree in its whole extent with the spicies of channel or low ground B U on Bouchette's plan. The island or promontory W extends down now much lower than it apparently did when Bouchette surveyed the premises, and must be attributed to alluvial action which is constantly going on more or less at all points in estuaries, where the meeting of the tidal and river waters produce a great diminution in the velocity of the current and cause it to deposit materials previously held in suspension, and carried along with the current. The species of island then refered to may have been, and probably was abraded and worn away from above as the present channel from the bridge down to X shews it to have been and the detritus deposited lower down. In that way can be explained the alteration which had taken place from 1806 to 1852, and which gradually shortened the island from above, and lengthened it from below until it had attained its present shape and position as defined by the outline X. Y. Z. of the wharf which now partly encloses it. O. C. Y. is the wharf on the Plaintiff's side built or rebuilt in 1850. The stones behind the stone store are shewn at T. Y. S. R. is the lower part of the tail-race which the Defendant asserts to have been changed from its former course in the direction S. T. It is very possible that this may be the case since the bank R is low and of alluvial and recent formation. A few feet below X were seen, when we surveyed the ground, some roots of trees which we have at the Defendants' request shewn on the plan at that point. The Defendant's pretension being that those roots prove there to have been no channel at that point. At point Y there is a tree growing out of the wharf as seen on (Section through point Y.) The Defendant pretends thereby to prove that the wharf at Y does not encroach on the present channel of the river. It is pretended by the Defendant and asserted by some of his witnesses, that that tree has sprung up from an old stump which existed there when the wharf was built. We have been told, though it does not appear in evidence that the tree was planted there since the building of the wharf, and it looks rather like it. It matters little however how it came there, and the Defendant may as well be entitled to the benefit of the doubt. The small bridge above the same dam is that alluded to in the testimony of those of the Defendant's witnesses on account of something that had occurred on the 19th march last and to which we shall refer anon. The survey is carried up to a point about the mill dam where the channel is shewn to be only 17 feet in width, and it is even narrower higher up, the pretension of the Defendant being that if such a narrow channel is sufficient at that point one of greater dimensions at Y must be so *a fortiori*.

The Learned Judges will take notice however that the channel at the narrow point above mentioned is but three feet deep, and that the adjoining land is more or less flooded during freshets. The several buildings on the plan speak for themselves. The feint red lines are merely imaginary lines made use of in surveying the premises. They indicate all the measures taken, lines of direction or directrices, lines of section etc. The several sections also speak for themselves and the lines of section have letters at their extremities corresponding with those through which the sections purport to have been taken. The scale to which the ground plan is drawn is forty feet English to one English inch and the sections are all

drawn to an enlarged scale of eight feet to an inch to render the details more sensible. The in lined pier or wharf at "section" through point Z shows the present position of the wharf of 1852 at that point and the upright pier behind it is what the position of the wharf at the same point is supposed to have been at the time it was surveyed by Ware in 1853. The lines shaded blue on all the sections all represent the same relative levels of water, thereby indicating what by the judgment we were required to report upon (*i. e*) the level of the tops of the wharves of both parties with regard to the depth to which they are generally covered at high tides of the 1st and 3rd quarters of the moon (for ordinary tides do not reach them or but seldom.) In the "section through water wheel and tail-race down to point Y" is shewn as thereunto required, by the judgment the relative height of the top of the wharf at Y and surface of the channel water at the same point to the under side of the water wheel. The same relative level is shewn as indicated by the writing on the other sections.

Plan No. 2 of this report indicates the relative positions of the present channel, and that of 1792, also the relative position of the present buildings and wharves to both of the said channels. This plan is divested of the high tide lines shewn on McCarthy's plan to make matters more apparent. The Plaintiff by this plan appears to have gained ground from the bridge down to the point Y, and to have lost ground from Y down to O and in the same proportion nearly. His having gained ground from the bridge down to X is probably attributable to the arch under the bridge of the turnpike road having been rebuilt since 1792 more to the eastward than it was before. No particular cause can be assigned for his having lost ground from Y to O other than the operation of natural causes such as the attrition and degradation of the river banks caused by the current itself at some points and the deposit of alluvium at other points. It will be observed that the stone store on this plan appears to have been partly built into the then western channel of the river, but McCarthy's channels may not have been surveyed with much accuracy and they being drawn to a very minute scale it is possible that it may be a mere defect in the plan which causes the stone store to appear to have been built into the channel. It may be however that the channel had already moved to the eastward ere the stone store had been built. The great difference between the positions of the present channel and that of 1792, between Y and O make it probable that between those two points the Plaintiff has really lost much ground: say about fifty feet at O and about thirty feet at C, or rather at midway between Y and O. According to this plan then the Plaintiff's wharf, cannot be considered an encroachment but quite the contrary.—It will be observed that the wharf of 1852, cuts completely across McCarthy's three channels and crops out on the opposite side. The wharf A B appears to partake somewhat of the general direction of McCarthy's channel, and might to a certain extent be looked upon as a proof of the channel having from B to A been more to the eastward in former times than it is at present.

It must not be forgotten neither that according to the titles the saw mill shewn on McCarthy's plan and site on which it is erected belonged to the Plaintiff's Auteurs in 1792, and that according to the same titles they had a right to any saw mill they might erect on the same sight and to the site itself "*à perpétuité*." Plan No. 3, of this report indicates the relative positions of the channels of 1792 and 1809, by which it appears that the Plaintiff through his auteurs had begun to gain ground from the bridge down to Y, and to loose ground in about the same proportion from Y down to O. By this plan also it is evident that the Plaintiff's wharf instead of encroaching on the channel is seperated from it by an average of about twenty feet. It is much to be regretted that there exists no plan of the premises of more recent date wherewith to compare the situation of the present wharves, and buildings. Plan No. 4 of our report indicates the relative positions of the channel of 1806 and the present channel, and needs no further remarks than those already made with regard to plan No. 3.

Plan No. 5 of our report is a mere copy of No. 4 with the addition of the lines of high water as they existed in 1806. By refering to Extract No. 10 Appendix C, it will be seen that John Racey Esq. (witness for Plaintiff but apparently with an ill humour against him for taking some of the stones of his distillery to fill his (the Plaintiff's) wharf with) see Extract 10 Appendix C, makes an assertion which is erroneous and absurd. He says that judging from Bouchette's plan of 1809 (the very plan filed by him in support of his testimony) the Plaintiff's wharf encroaches from the wooden store to the stone store.—Now it is evident from a mere glance at plan No. 5 of our report whereon that of 1806 is transferred, and laid down that there is a slight encroachment at C merely beyond the line of high spring tides or beyond the top of the bank as it was at that time and that from C down to near O the Plaintiff's wharf is several feet within the top of the bank or high tide line. So much for such unfounded assertions as that. The Plaintiff's wharf at O encroaches or projects as asserted by several witnesses about 14 feet beyond the line of high spring tides but is still very far from interferring in any way with the channel of the river as it was in 1806 and as it is still at this moment. Gabriel Grenier, one of the Defendant's witnesses at "Extract No. 8 of Appendix C continued" makes a most unfounded statement and if the qualifying remark under his name in the margin be read, some idea

may be entertained of the importance to be attached to his assertions. He says "*Je suis positif que le quai du Dom. empiète sur le chenal de sa largeur* (about 10 ft.) *a chaque bout et plus au milieu.*"—Such an assertion as this must be explained, when the man that makes it, is not an idiot, but on the contrary a respectable man as Grenier, seems to be in every respect. We think better of human nature than to attempt to find a perjury when there may have been not the least intention on the witnesses part to commit one, and shall endeavour to explain under what circumstances Grenier may have viewed the premisses previous to making an assertion of the kind. When we stand on the Defendant's side, below the wooden stone and look along the back of the stone store, it must be confessed that the Plaintiff's wharf has an ugly bulging out appearence, which might almost lead one to say that it were an encroachment; but suppose it follows the natural bend of the river, what is to be said then? The bends and curves of rivers are not always line of beauty. Grenier's assertion however can be accounted for in another and perhaps more satisfactory way. It appears by Grenier's own evidence in this Case and by that of Bisset in Re 865 Gugy vs Brown (Extracts Nos. 12 and 13 Appendix P) that previous to the erection or rebuilding of the Plaintiff's wharf, the old wharf, if there was one, must have been low, and that the bank slopped down from the top thereof to the edge of the channel below, and that the high tides rose on the bank (which of course they must naturally have done and would do still if the said wharf were not there). Now suppose Grenier should have seen the premisses at high tide previous to 1850 (at which time the Plaintiff's wharf was built) would not such false appearences have deceived him or any other witness, who had seen the river under such circumstances. It is true Grenier does not say the wharf projects beyond the line of high tide but into the channel and the excuse above given for his evidence would fall to the ground as worthless unless we suppose that being an illiterate man, he may have used the word channel for the whole bed of the river from the top of the bank on one side to the same on the other side. Another most extraordinary assertion and especially for a man of education, and a surveyor with all is that made by Gerald Dunlevie Esq., another of the Deddi's witnesses (see Extract No. 9 Appendix C continued) who says "were it not for Plaintiff's wharf the river would flow more to the south-west behind "the wooden store. I think there is an encroachment by Plaintiff for fifty feet up behind "the wooden store *because my chain bearer could not pass at foot of wharf without wetting his "feet.*"—At that rate all the wharves in the Lower Town would be encroachments, as Mr. Dunlevie's chain bearer would certainly wet his boots if he passed along the foot of most of them even at low tide.—When Mr. Dunlevie stated that if the Plaintiff's wharf were not there, the river would flow more to the south-west, it is astonishing it did not occur to him that if the wharf were removed, there might be found such a thing as a bank behind it, which if it also were removed in conjunction with the wharf, might produce the effect stated by the learned Gentleman.

The last remark we have to make as to an encroachment of the Plaintiff's wharf is on what is asserted by Etienne Langevin, Extract No. 10 Appendix P continued. This witness states that Plaintiff's wharf "*empiète* 12 *à* 15 *pieds dans la rivière où passait le courant.*" We shall not be quite so delicate as regards Langevin about finding an excuse for a statement already proved to be ridiculous and false. We shall merely say that it appears Langevin after working at the Plaintiff's wharf for some time was ousted for something he was suspected to have taken from the mill, and hence his revengeful assertions. While writing of the Plaintiff's wharf in connection with our remarks on our plan No. 5, it may be well to repeat what has already been hinted at in a former part of this report: (*i e*) that the top of the natural bank is still to be seen inside the Plaintiff's wharf and at a distance of about nine feet from the outer-face of the wharf a circumstance which leaving aside all the evidence on the matter furnishes in the way we have already explained in answer to the 2nd paragraph of clause 6 of the interlocutory: an evident proof of there being no encroachment by said wharf. Plan No. 6 of our report indicates as it purports to do, the present wharves and buildings in relation to the channel and high tide lines of 1792. As it was already observed the stone store by this plan is built into what was at that remote period one of the channels of the river. According to the Defendant's views however an encroachment at such a remote period is not to be considered in the present case. The Defendant stated to us on the sixth of May of this year while standing with him on his side of the river, at the point B that even if his wharf A B were an encroachment of any kind it was not to be in any way taken into consideration as it had been built 25 years ago, that is previous to the Plaintiff being in possession of the mill. According to that statement therefore gratuitously made by the Defendant any encroachment at the stone store, is not for a moment to be considered.

Plan No. 7 of our report has already been alluded to in our answer to paragraph 5, clause 6 of interlocutory, and shews as is there stated and as it purports to do the appearance of the river during an ordinary high tide. This plan in connection with the sections on Plan No. 1 which indicate the depth of water during high tides covering the beach or low ground now partly enclosed by the Defendant's wharf of 1852 will furnish a rather graphic illustration of the way in which the navigation of the river is impeded as asserted by so many witnesses extracts from whose evidence are given in appendix E.

Answer to clause No 11 of Interlocutory

The Experts as it is stated at the beginning of this report did comply with all that is here ordered to be done previous to proceeding. It remains however to make some remarks as to the Enquete held by the Experts at Mr. Baillargé's office on the subject of the stoppage of the mill wheel previous to and after the erection of the Defendants's wharf of 1852 The Honorable Judges will perceive should they read over the evidence taken by the Experts that they apparently exceeded their powers by taking some evidence rather foreign to the point on which the Interlocutory authorised them to adduce evidence. The Experts can only plead that it was impossible to avoid it. It will be understood in connection with the stoppage of the mill wheel, that if at any time previous to the wharf of 1852 that wheel had been of smaller diameter or at a greater distance from the ground or in other words more elevated with regard to the high tides ; such a circumstance would of course have to be taken into consideration in calculating the difference in the time of stoppage previous and subsequent to the wharf of 1852 and hence the necessity of the questions put to the witnesses on those points. It will also be conceded that if in former times it was customary to work the wheel even after it was submerged to a certain depth, and if it is not now usual to do so such a circumstance should be taken into consideration in computing the difference asserted to exist in the present stoppage of the mill-wheel as compared with its stoppage previous to the wharf of 1852 ; and hence again the necessity of the questions put to the witnesses on that point. In examining the witnesses on the comparative stoppage of the two periods before and after the wharf of 1852. It was difficult to do so without taking into consideration the relative causes of such stoppage. For instance if a witness of his own accord in connection with the stoppage mentioned any wharf as being the cause thereof, it became necessary to ask him what wharf and if he answered "*le quai de Gaspé*" (an expression which occurs several times in the evidence) it was still necessary so we thought to ascertain precisely which wharf the witness meant. If the witness went to say "*le quai que construit un nommé Gill*" it then became necessary to ask "*quel quai*," and so on until we were in reality lead away from the point at issue. We considered it right to allow the parties to ask any questions as to obstructions to the working of the mill wheel that is any question bearing directly on that stoppage. The Defendant thereafter translating our words in rather an extended way took occasion to examine the witnesses on the stones behind the stone-store and the point P etc.

The Plaintiff very properly objected, as he had a right to do, to going into such matter as there was no knowing when the Enquete would end if such a course were persisted in and his objections will be found, stated in the margin in many parts of the evidence. The Plaintiff's Expert thought, it would not be acting with that impartiality to be expected of an expert if he maintained the Plaintiff's objections to any questions as to stones behind the stone-store, or to the changing of the direction of the tail race and formation of the point P which might have elicited answers unpalatable to the said Plaintiff and for that reason most of the answers were allowed subject, to the objections so raised. The difficulties of the case will easily be conceived when it is remembered that the Defendant himself, and not his Expert (though present all the time) conducted his Enquête and examined the witnesses, not as an expert would have done, but as lawyer generally does, that is, on every point favorable, to his view of the question and unfavorable to that of his opponent the Plaintiff. It is here necessary for us to remark on some expressions which occur several times in the body and margin of the evidence (*i e*). Cross questioned by Mr. Baillargé " which the Defendant always caused to be inserted, when Mr. Baillargé examined his witnesses, but which he took care not to have inserted when he examined the Plaintiff's witnesses.

The Defendant had previously set forth as the principle of action of an expert (which of course the Experts were well aware of) that an Expert unlike a lawyer was not supposed to cross question in the litteral sense of the word (cross questioning according to the learned Defendant meaning, the examining of a witness in a way to make him contradict his evidence in chief) but was supposed to ask any and all questions necessary to arrive at the truth ; and that being admitted, which of course was agreed to it was unnecessary to have the expression " cross examined " entered in the evidence. The rule throughout the examination of the Plaintiff's witnesses was adhered to ; that the Defendant's expert, who was supposed to have examined the witnesses instead of the Defendant himself might not appear to have acted wrongly in cross questioning the Plaintiff's witnesses. The principle enunciated by the Defendant as above stated, if good, should have been made to apply throughout the enquête and the expression " Cross examined by Mr. Baillargé " should have been left as that " cross examined by Mr. Wallace was left out in his examination of the Plaintiff's witnesses. Why then did the Defendant's request those words to be entered ? He is a learned and eminent lawyer and a deep man, with fluent and polished speech, nay ; more eloquence always ready to persuade one of the truth of his assertions. Why then was the rule put forth by him, not allowed to work both ways ? He must have had an object in it. The whole matter in reality is of little or no importance we conceive : but it has occurred to Mr. Baillargé that the Defendant's view in acting as he did was, should the Experts arrive at conclusions favorable to him to make it appear to the Honorable Court that Mr. Baillargé had acted in the enquête not as an Expert ought to act, but rather as a

Lawyer [illegible] one but [illegible] appeared. Mr. Bai[illegible] [illegible] leg to disclaim in advance of any possible [illegible] afforded the Defendant [illegible] that it is very far from acting with any partiality on the matter, [illegible] quite a contrary way and more than once [illegible] the Plaintiff's [illegible] allowing the Defendant throughout the Enquete to have every thing his own way which is a fact the Defendant cannot deny. The Experts considered that the Defendant should have every possible chance of disproving all the Plaintiff's charges as set forth in his declaration and all possible scope was therefore given him to do so. Again said the Defendant and he repeated it most often. "Put down the witnesses own words (the Plaintiff's witnesses of course), and especially when they happened to express themselves in rather an incomprehensible manner. Now that rule should also have worked both ways, but it was quite the contrary with the Defendant when he examined his witnesses. He then as much as possible put down *his* own words and not those of the witnesses. The result of such a mode of procedure would of course make his witnesses appear to have given the clear and concise evidence of men of education and those of his opponent as having done quite the contrary. So far, and considering the Defendant to be acting all the time, not as his own Expert, but as his own Lawyer, and as one of the interested parties moreover, there was no great harm done; but we perceived a very marked tendency on the Defendant's side when left unchecked, to illustrate practically the expression "*making mountains of mole hills*" a tendency already alluded to in this report in connection with the same learned gentleman. For example Janet Daly in his evidence before us spoke of a lot of stones behind the stone store, which expression the Defendant immediately translated or replaced by the words "great heap." In Grenier's evidence will be found a marginal note signed by Mr. Baillargé alone; it refers to the word "*je pense*" which though never uttered by the witness in connection with the statement he was then making were nevertheless unscrupulously added by the Defendant in dictating to the clerk the answer to be put down. Mr. Wallace had remarked to the other Experts how positive all the Defendant's witnesses were as to all their statements in contradiction to the existence of the supposed N E channel and in affirmation of the encroachment of the Plaintiff's wharf. It may be matter for conjecture if the expression "*[illegible] pas [illegible]*" etc. which appear in the evidence taken at the Court House, were not smuggled in by a similar process.

The Experts do not pretend to say whether they acted rightly or not in permitting the Defendant to examine the witnesses directly instead of indirectly through his Expert. They thought that since the parties could request any particular question to be asked, it was about the same thing to allow them to put the questions directly themselves. The Plaintiff did not avail himself except in a very few instances of the permission granted, and when he did so had to be checked continually on account of a rather natural tendency on the part of one so interested to lead his witnesses, but as already said the Defendant did so throughout the enquête. The result turned out to be unfair towards the Plaintiff and it will only remain to act more wisely another time. It is now important to remark on some evidence adduced first by the Defendant, and then in rebuttal thereof by the Plaintiff on the opening of the sluice gates of the dam of the mill pond on the 19th March last a day on which the Experts were present at the mill for the purpose of making some observations on the cause of the stoppage of the mill during that day.

The avowed intention of the Defendant, in adducing this evidence, was to show that some trick or unwarrantable means had been employed on that day by the Plaintiff or by his men to mislead us and make matters appear much worse than they realy were in the Plaintiff's favor. These assertions should they ever be denied by the Defendant, will be fully carried out by a reference to the witnesses own words (see Extracts Nos. 13, 14 and 15 of Appendix P). —Though Grenier appears to be a most respectable man it will not be forgotten that he admits [illegible] "*[illegible] Demandeur*," then again he lives in one of the Defendant's houses, and though last not least, it will not be forgotten that he is one of those who made the ridiculous statement as to the Plaintiff's wharf projecting so many feet into the channel, a thing proved to be utterly false and groundless. As to Moreney our remarks on his assertion about the "*espèce de mur en pierre sèche*" will suffice to shew how his evidence should be appreciated. Now as to Martin who at the time he gave his evidence worked by the day for the Defendant, the Extract No. 19 Appendix P from [illegible] will show [illegible] object. This evidence though apparently extraordinary [illegible] stoppage of the mill, [illegible] be considered as relating in an indirect way to the stoppage that occured, on the said 19th March last and the Defendant was therefore allowed to adduce evidence [illegible] point. The assertions of Grenier, Moreney and Martin [illegible] way [illegible] and qualified by those of the Plaintiff's witnesses, Auger, McKenna, Marcoux etc., Extracts Nos. 20, 16, 17 etc. We do not think it necessary to [illegible] having at the time been opened or raised. It is of not the least importance, with regard to the effect produced upon the stoppage of the mill wheel. Though the Defendant's witnesses do say that the opening of [illegible] at the effect of making it appear to the Experts that there was "*beaucoup plus [illegible]*" we on the contrary do assert that it was no such thing. Some gate was raised undoubtedly about the time we went below the mill, now is it denied in any way

by the Plaintiff the effect produced being that of a "*petite mouche d'eau*" as some of the witnesses say. It caused a small stream of water, about three inches in depth, to flow over the ice, then in the channel and had no perceptible effect in augmenting the then depth of water on the mill wheel. Now we do not wish to make it appear that the Plaintiff's witnesses are more worthy of belief than those of the Defendant, for there occurs several contradictions in their evidence, on the subject of the opening of the gates and the working of the mill from the 18th to 21st March aforesaid, and it is very possible, if not probable that in their zeal for his cause, there may have been an idea of aggravating maters on that day, by something of a trick, which however, if intended as such (a testament we think not at all borne out) produced no result worth mentioning. The Honorable Judges will remark that Grenier himself says, that at the time the gates were raised, there was six inches deep of water passing over them, and further on, that *it was necessary to open the gates.* Marcoux says that had the gates remained closed, his land would have been flooded, a circumstance which would have rendered the Plaintiff liable to pay damages to Marcoux for any harm done by the water. In corroboration of our assertion as to the Defendant's wish to make it appear, that the mill may have been on some occasions purposely stopped by the Plaintiff or by his men, to cause appearences to be in his favour, we take the liberty to refer to a question by the Defendant, in the examination of Edward Henderson. We need not say any thing more on this subject, than, that on every occasion that we observed the stoppage of the mill, we took good care not to go by hear say but measured the water ourselves than on the wheel, so that there could be reasonable doubt at the conclusions we arrived at. It is here necessary to allude to a protest by the Defendant against Mr. Stavely for going out to the mill to make observations unaccompanied by the other Experts and in the absence of the parties.—It is only requisite to say that the Experts were and are still of opinion that each and every one of them separately or conjointly had a perfect liberty to go out to the mill on their own account to inform themselves on any particular point and thereby help to make up their minds and come to a judicious conclusion on the points at issue.

After having answered, to the best of our capacity every, one of the separate questions, paragraphs and clauses of the Interlocutory, and notwithstanding the length this report has already attained, it is still necessary to offer several remarks corroborating or in any way affecting the conclusions we have come to on the numerous questions, we have had the honor to answer as contained in the said Interlocutory. We have thought it fit to corroborate our opinions as much as possible by the assertions of the witnesses examined in this case. To have referred in each instance to the particular page or pages, wherein were to be found any required assertion, would have been an almost endless matter and very unsatisfactory to the Honorable Judges on account of their having to seek out in each case the particular evidence referred to. We have, therefore, ourselves in going over the evidence selected, and classified the whole of the evidence contained in the voluminous record. We have arranged it under the several heads, affecting the many points at issue as contained in the declaration "Exception" and Interlocutory Judgment, and have condensed and brought the whole together in the form of Appendices A to R inclusively annexed to our report. We have also in the two last appendices given miscellaneous extracts from evidence, titles and authors, etc.—In a word we have wished to present a report complete in itself and accompanied by a thorough synopsis of the whole record to save the Honorable Judges, the trouble and time of referring in any way to the said record. Now as to the composition of many of the extracts it is necessary to say that a phrase or paragraph has often been made up of several phrases or paragraphs of the witnesses evidence. For example when a witness states his having observed any particular occurrence, without at the same time, saying when, and where he made his observation and when in a subsequent part of his evidence he is made to complete his previous statement by saying when and where. The whole is put together in the extract in a way to make a complete and comprehensible statement. Had we acted otherwise the appendices must have attained to at least twice their present dimensions. Also when a witness mentions, "the Defendant's wharf" or "the wharf of 1852," or "the wharf that crosses the river" "or the wharf that cuts off the eastern channel," and when there can be no reasonable doubt as to the witnesses meaning, we have in every case translated the witnesses words by "the wharf built by the Defendant in 1852" or "simply the wharf of 1852." For had we done otherwise the Honorable Judges in refering to the evidence, might not have always understood what particular wharf the witness meant. We have replaced also the letters C C used by many witnesses in their evidence by the letters X Y which on Ware's plan (Plaintiff's exhibit X) are placed exactly at the same points. So that most of the expressions; as to there ever having been a channel between C and C we have translated by equivalent expressions as to the existence of a channel between X and Y that the learned Judges may not suppose that different points on the plan or ground are meant when in reality the self same points are meant in every case.

Opposite all the extracts we have taken care to enter in the margin the qualifying statement made by the witnesses themselves or other statements known to ourselves to be true, tending to affect in any way the veracity of the witness's assertions; such for instance as the witness being at the time of giving his evidence in the employ of the party for whom

he is giving evidence or of living in a house belonging to that party or of his being on bad terms with that party or his adversary and so forth.

We now proceed to analyse as concisely as possible the several Appendices annexed to this report.—The synopsis at the end of each Appendix is a species of analyzation of itself. The synopsis to Appendix A at first sight shows a rather formidable array of witnesses against the existence at any time of a north east channel. The opposition ranks, however are considerably thinned by striking out those who only say that from present appearances there never was a channel between X and Y. They give no opinion as they were not asked to do so, if there may have been a channel above X. Joseph Picard is put down in the synopsis as one of those who is against the existence of a former channel; and yet in his very evidence there occurs an expression which would imply some such thing. He says, "*Il y avait une petite île entre entre maintenant par le quai du Défendeur.*" Where there is an island we conceive there must also be a channel on both sides. Maurice Marcoux though he begins by stating there never was another channel, is put among the witnesses for on account of his expression that "*Dans les grosses eaux, l'eau répand partout et ne suit pas le cours de la rivière,*" because it is not sought to establish in favor of the Plaintiff that there absolutely was a channel but at least some low ground over which freshet water used to flow. Thomas Grenier is also classed among the witnesses for or account of the expressions "*derrière les* [illegible] which he makes use of. It may be said, generally speaking that, to many of the witnesses there may never have appeared to be another channel owing to the peculiar circumstances under which they may have viewed the premises. It has already been said that in winter and summer there was generally only enough water for the [illegible] (and there in this respect have been any difference previous to 1852) which of course would have all passed out through the mill-race and down the present channel and at all such times the bed of the N. E. channel would have been comparatively dry. It is probable that no water except freshet water (and a freshet is not a thing of frequent occurrence) passed through the supposed N. E. channel at least since a number of years past, and only to those who had seen the river under such circumstances, would there have appeared to be a channel, as at all other times it must have been dry ground. The Defendant appeared to us to feel quite glorious about the evidence of John Ferguson, who though he came to Canada, only in 1854, that is two years after the wharf was built speaks of the N. E. channel which of course he never could have seen as he himself admits, as having been cut off by the Defendant's wharf of 1852. The Defendant thereupon openly stated in presence of the Experts, that it was his avowed intention to prove, Ferguson to be a *liar* and a *perjurer* and to do the same of most of the Plaintiff's witnesses. This is so true that a suit has lately been instituted by Ferguson against the Defendant for the expressions he made use of. Now we are not at all disposed to think so bad of human nature as we have already said, as to think a man capable under all circumstances, of telling a *falsehood*.—We have endeavoured to absolve Grenier one of the Defendant's witnesses from having asserted a wilful absurdity and falsehood, and will now do so for one of the Plaintiff's witnesses. We have already said that there are natural traces though slight ones of the former existence of a N. E. channel, and who knows but those traces may have appeared much more glaring to Ferguson, than they did to us. Since the made-earth at B. Q. X. did not extend so far out in 1854, on Ferguson's arrival at the mill as it did when we surveyed it three years afterwards. This assertion is proved by refering to Larue's and Austin's plans indicating the boundary of the made earth as it was in 1854, may he not have thought himself justified in asserting what he did if from his observation of the locality it appeared to him that there had formerly been a channel there. Alas though for the inconsistency of man and that man the Defendant in this cases, the eminent lawyer withal. The Defendant craved permission from the Experts to hear in evidence H. N. Jones, Esq., for the avored purpose as he stated of making a *Liar* of Ferguson and others of the Plaintiff's witnesses. The result of granting the permission and hearing Jones was none other than to ask him a number of questions about the stone behind the stone store and about the tail-race point P, &c., and other matter extraneous to the point on which the Experts were at liberty to adduce evidence. Now among other things what does Jones say (Extract No. 7 Appendix C continued) "that he holds the stone store to be an encroachment on the channel" and yet he never saw that channel previous to the stone store which was born before him, and how could he know the stone store was an encroachment on a channel he had never seen any more than Ferguson could know the wharf of 1852, to have cut off a channel which he never saw. In point of fact both men made their assertions from observations of the locality as it now stands. If one of them therefore was a liar the other must be so (according to the Defendant's showing;) but we had rather be more charitable and say that neither of them deserve to be called by such a name. In regard to Appendix B it is only requisite to state that it is attempted hereby to prove that the wharf of 1852, is an encroachment not on the present channel but on the general bed of the river and beyond the real banks thereof. Now it might be supposed by a general view of the synopsis that the assertions of the witnesses who speak of an encroachment as above stated, are contradicted by those on the opposite side. It is not so, however, since the Defendant only tries to prove

by his witnesses, that his wharf does not encroach beyond the natural bank, not of the river, but of the island, low ground or beach in the river.

This Appendix may be considered therefore as proving two different points, 1st.—That the wharf of 1852 does not encroach on the present channel. 2nd. That it does encroach on the real bed of the river, as that bed has been since 1806 and earlier than that. We need offer no further remarks on appendix C, than has been done in the body of the Report by which we have fully demonstrated that the Plaintiff's wharf in no way encroaches on the channel of the river, as it is now or has ever been before. The only assertion by the witnesses as to encroachments having been made by the Plaintiff, which can be considered as correct are those of Larue and Wickstead as to a slight encroachment at C of about four feet beyond the top of the bank or high spring tide line, and of another of about four feet at O beyond the same line of high tide but not interfering in any way with the bed of the river or course of the water or channel. The appendix D and synopsis thereto speak for themselves and prove that the river Beauport is looked upon by every one of the witnesses on both sides as a navigable river during all high tides of the 1st and 3rd quarters of the moon. The navigableness of the river appendix F proves by 25 witnesses that the wharf of 1852 is an obstruction to the working of the mill. Appendix F asserts by 12 witnesses contradicted only by two that the wharf of 1852 is an obstruction to the working of the mill. There appears by the synopsis to this evidence to be five witnesses who contradict the assertions of the other 25 witnesses, but such is not the case. Those five witnesses merely assert what is in no way denied by the Plaintiff that the said wharf is no obstruction to the flow of the water under ordinary circumstances, or in the normal state of the river.

Appendix G.—As to the stones behind the stone store. Read the synopsis.

Appendix H as to the eddy at P and obstructions in the tail race, etc. Read the synopsis.

Appendix I; Appendix K; Appendix L.—The evidence in these appendices regards the former size of the mill wheel, the distance between it and the ground or its height above high tide level, and the depth to which it was usual to allow it to be submerged previous to stopping it.

Appendix M is as to the time the wheel used formely to stop during high tides. The average time of stoppage in former times is certainly less than what it is at present from our own observations. The time of stoppage at present is from about one to five hours or say three hours on an average, whereas it appears from the evidence to have formerly been, not more than two hours on an average.

We cannot however arrive at the conclusion that the wharf of 1852 is at least to any sensible extent the cause of the difference in the time of stoppage under ordinary circumstances that is during high tides unaccompanied by freshets or jams of ice.

We believe it has been customary of late not to drive the wheel when submerged beyond a few inches, whereas it appears by Appendix L that formerly the wheel was worked sometimes, even when it was submerged to the extent of two feet or more.—Now as the tide rises or falls about three feet an hour during high tides, if we suppose that the wheel is now made to stop when submerged six inches, and that it was formely allowed to go until it was submerged two feet, it will be understood that the difference of time would be equal to that required by the tide in rising and falling the extra eighteen inches. That difference would just be about an hour, and in this way, can the difference between present and former stoppage be accounted for. If again we suppose the diameter of the mill wheel, to have formely been from seventeen to twenty feet as stated by some of the witnesses, while its present diameter is twenty one feet, and if we, at the same time, suppose the shaft or axle of the wheel to be in the same position as it always was, it will be understood that the bottom of the wheel under such circumstances, must have been elevated formely above the tide, from six to twenty four inches more than it is at present, and that circumstance again would account for the difference between present and former stoppage. To account for the difference in any other manner is impossible, unless we suppose (which is rather unlikely) that tides rise higher now a days, than they did formely, or that there has been some depression in the land to be accounted for, on geological principles. Had the bed of the river, near the mill, been very large in former times, so as to cause the space to form a kind of dock or basin of great size, and the inlet from the St. Lawrence very small, comparatively to the size of the said basin, it will be understood that such a space would have taken some time to fill and that ere it had been filled to the level of the St. Lawrence, the tide might have already began to fall again by which process the water in the basin would never have acquired the same surface level, as the tide water in the St. Lawrence. The size of the basin however in 1792 or 1806 was not sufficient comparatively to the sectional area of the inlet, to cause any perceptible effect, such as that above described, and much less can any such effect be caused at present.

We must therefore consider the Plaintiff's pretensions with respect to the great difference he complains of between present and former stoppage of the mill wheel by the wharf of 1852, as unfounded, for we do not think the wharf capable of making more than from 5 to 10 minutes difference in the time of stoppage at each tide. The great difference above stated between the time the wheel stops now, and the time it used to stop when others had the mill must be accounted for, as we have already said, by some difference either in the size of the wheel or the distance between the wheel and the ground beneath it or by the difference of the depth, to which the wheel is now allowed to be submerged before stopping it, as compared with what that submersion used formerly, to be.

Appendix N must be considered to prove at least as far as can be done by evidence (for the contrary cannot be demonstrated by anything that preceded the erection of the wharf of 1852, the Plaintiff's mill never stopped from any other causes than the high tides.

Appendix O shews even if the evidence were not corroborated by our own observations, that since the erection of the wharf of 1852, the mill wheel has been stopped from causes other than the high tides. It is necessary to notice here an apparent discrepancy in the evidence of Edward Henderson extract No. 13 Appendix F. In speaking of Defendant's wharf of 1852, with regard to its effect on the mill he says "the effect of the wharf is to throw back water on the wheel" and then "I do not know that such a thing has occurred" he is then made to say in the same Extract, "I have several times seen the mill stopped by back water from freshets since the wharf of 1852." This discrepancy ceases to exist when it is considered that the first citation is taken from Henderson's evidence given at Court several years ago, and not long after the building of the wharf of 1852, and that the last citation is from his evidence given before the Experts in 1859, the interval having evidently furnished him with opportunities for learning that of which he was first ignorant. In Appendix P will be found miscellaneous extracts from evidence referred to in the report. The several appendices also contain many extracts not directly referred to in the report but which will be found important in corroboration of the conclusions came to by the Experts.

In appendix Q we find in extract No. [illegible] "[illegible] (Plaintiff's ancêtres) [illegible] (Plaintiff's ancêtres) *de leur liberté de Transport dans la dite rivière.*" Now independently of there ever having existed a north east channel which may have been cut off by the Defendant's wharf. It will be considered by the learned Judges whether a freshet is a natural or an artificial thing, and if a natural phenomeno nofregular and periodical occurrence, the river should not be left open to allow it a free passage instead of forcing it into an unnatural direction by any wharf or other obstruction. Appendix Q contains among other things the fifth of the parties pretensions as contained in the declaration and exception. Extracts 6, 9, 10, 11, of the Appendix give some information as to the frequency and extent of freshets in the river Beauport. Many freshets are therein mentioned as having been extensive enough to flood all the lands in the vicinity and even the main road between the dam and the mill. Now it is important to say that from the impossibility of being on the ground at any particular moment or from other causes we never happened to witness a freshet of sufficient extent to flood the banks of the river above the dam or rather the adjoining land. Though we witnessed traces of many such inundations, we did not therefore see the river on any occasion in its worst conditions, with regard to its action on the mill wheel so that it may be inferred that our conclusions in favor of the Plaintiff are on the safe side. Appendix R contains important extracts from *Denizart, Lefèvre de la Planche, Ordonnances Maritimes de 1681, Duval, etc.*,—Defining the legal meaning of a navigable river and the penalties of obstructing it &c. In connection with these extracts read extract No. 3, of Appendix P.

We had nearly omitted to state before concluding our remarks that there exists unmistakable evidence of the intention the Defendant had while building his wharf of 1851 to continue that of 1852 in the same straight direction down to the point A on our plan No 1, several of the Defendant's witnesses employed by him in erecting the said Wharf, from by their expressions that they expected it to be continued in a straight line with that of 1851 and as an unequivocal proof of this intention, on the Defendant's part, there exists within the wharf of 1852 a [illegible] number extending down some twenty five feet in the said direction. Why such a good intention was never carried out, we cannot pretend to say, unless to be sure it was thwarted by the Plaintiff's protest against the wharf of 1851 which may have indisposed the Defendant to some extent towards the Plaintiff and caused him to enclose the whole of the low ground or beach to which he pretends he [illegible]

CONCLUSION.

W[illegible] for the [illegible] the numerous clauses of the Interlocutory [illegible] an infinity of separate questions [illegible] wers, and we come [illegible] of the interlocutory at [illegible] to come to any [illegible] out opinions as we [illegible] as the whole record, [illegible] for us to have [illegible] been as satisfied [illegible] already been fixed [illegible] had [illegible] they had [illegible] and [illegible] etc., for an exp[illegible] therefore we have [illegible] as possible with [illegible] homologation of our report.

No clause in our [illegible] of the Interlocutory are with [illegible] necessity for thoroughly reviewing [illegible] having had the case in our hand [illegible] two years. [illegible] not deem it too much to devote a [illegible]

(Signed.) { CHAS. BAS[illegible]LARGE.
{ EDWD. ST[illegible]VELEY.

APPENDIX A.

Extracts from Evidence adduced by Plaintiff on the existence of a North-East Channel of the River Beauport opposite the Stone Store, previous to the building of the wharf of 1852.

Fre. Vachée 1. Lost a suit with Defendant seventeen years ago. Daniel McCahon 2.

Bred in Beauport, near the river, lived there, 26 years. "La rivière est bien barrée Le quai de 1852 barre le petit chenal du N. W. et renferme la petite île qu'il y avait dans la rivière."

Recollect in my Father's time a small island. Ship's waters then flowed on each side there by forming two channels. Wharf of 1852 built in what was formely a portion of the channel and now presents the waters flowing to the east side of the island.

Angus McDonald 3.

Wharf of 1852 and 1851 prevent water from flowing through the whole of the river's different channels. Previous to construction of wharves, water flowed over the whole beach. River now confined to one small channel.

I. Jones 4.

Do not remember the island. Believe before wharf of 1852 was built there where two channels extending a short distance below the mill. The waters may have passed more than they now do on the Defendant's side especially in the case of a freshet.

P. Sawan 5. Had a suit with Defendant 12 years ago and lost. Lives opposite island.

A vu une petite île, vis-à-vis du "Stone Store." Le quai de 1852 renferme cette île. Dans les mers, l'eau de la rivière passait des deux côtés de cette île.

L. Gravel 6. [illegible]

J'ai connaissance d'une petite île qui est maintenant renfermée par le quai de 1852. Dans les grosses eaux, et quand la mer était basse, il y avait un petit chenal qui passait au nord est de l'île. Le chenal du nord est n'existe plus étant barré par le quai de 1852. L'île ne paraît plus maintenant parce qu'après le quai fait, il a été charroyé une quantité de vidanges sur l'île.

L. [illegible] 7.

De mon temps il y avait dans la rivière une petite île. L'eau passait des deux côtés de cette île. Quand l'eau était bien grosse elle passait par dessus l'île et la plus forte partie de l'eau passait au nord est. Le quai empêche l'eau de couler au nord est.

F. N. [illegible]

A vu la rivière 15 ans. Il y avait de mon temps une petite île. Quand les eaux étaient basses, il y avait un chenal à la rivière. Au printemps lorsque les eaux étaient grosses, la rivière passait dans [illegible] comme manière d'un petit chenal au N. E. de l'île. Le bas [illegible] par le Défendeur, c'était plus profond qu'ailleurs. [illegible] le long de ce quai à parce qu'il y avait plus de [illegible]. Les deux chenaux n'existent plus, parce que le quai de 1852 a barré [illegible]. Le quai de 1852 empêche l'eau de se répandre sur la petite île, et [illegible] Défendeur.

J. D[illegible] 8

Je suis possédant [illegible] chenaux. Nous n'avons pas [illegible] quais de 1851 et 1852. Il y en avait qu'un. *Il y avait un* [illegible]

[illegible] 9

Le [illegible] 1852 [illegible] il y avait une petite île qui se [illegible] Le [illegible] a coupé le bras ou le cours [illegible] 1851, ça commençait à gêner.

A. B. [illegible] 10. Il y a [illegible]

Avant la construction [illegible] 1852, il y avait [illegible] chenaux dans la rivière. Il y avait une île [illegible] A [illegible] la rivière avait de soixante à quatre vingt pieds de large [illegible] "Stone Store." Quand l'eau était grosse, il [illegible] passait à côté du N. E. [illegible] Le bord du quai qui bouche le bras de la rivière

---

M. Scott 12.

P. O'Brien 13 Clerk in Plaintiff's employ at the time he gave his evidence.

B. Blais 14.

J. B. Fortin 15.

G. Bisset 16.

J. Fergusson 17. Miller in Plaintiff's employ was not in Canada previous to the building of which I nor for two years after.

Edward Henderson 18

François Nadeau 19

Lawrence McKenna 20.

C. Bitner 21.

P. Morin 1

W. Austin 2 Surveyor.

Lambly 3

Grenier 4

Narcisse Fournier 5

F. Crépeau 6

J. J. Rocket 7 [illegible] years ago. Defendant [illegible]

A. Barb[illegible]

D. Gr[illegible] 9.

N. Grenier 10

M. Scott 12. — Batture and 2 channels. Channel ran from point X to the N. E. of wharf of 1852. Am almost sure the N. E. channel was the deepest of the two.

P. O'Brien 13. Clerk in Plaintiff's employ at the time he gave his evidence. — Wharf of 1852, built around a small island. There were two channels, that is one channel and the mill race. Greatest quantity of water then passed in present channel, and a portion of it to the north east of island N. E. channel cut off by wharves of 1851 and 1852, but especially by that of 1851.

B. Blais 14. — Quai bâti dans le milieu de la rivière et même plus, le Défendeur par ses quai à bouché la rivière. Avant le quai le plus fort des eaux courait au N. E. vers l'ancien quai B du Défendeur.

J. B. Fortin 15. — Le quai à l'effect de conduire l'eau de la rivière au canal du moulin et çà complètement changé le lit de la rivière.

G. Bisset 16. — Spring freshets went right around the small island between the discharge of the mill race and the N. E. or main channel of the Beauport river.

J. Fergusson 17. Miller in Plaintiff's employ was not in Canada previous to the building of wharf nor for two years after. — The wharf of 1852 that is built across the river. After a freshet comes down instead of taking its proper straight course the current is turned by the wharf. If a portion of the wharf of 1852 were cut away and the *flood* water made to pass through that opening no obstruction would occur. If the water were not there the water would flow through its natural channel.

Edward Henderson 18 — Wharf of 1852, built across natural channel of river Beauport.

François Nadeau 19 — Le quai de 1852 qui traverse en partie la rivière.

Lawrence McKenna 20. — Water from natural channel now goes with that of tail race.

C. Bitner 21. — Le quai de 1852 qui est de travers dans la rivière et empêche l'eau de descendre à la grève.

APPENDIX A. *Continued.*

Extracts from evidence adduced by Defendant on the existence of a North East Channel of the River Beauport opposite the Stone Store previous to the building of the wharf of 1852.

P. Morin 1. — Je n'ai vu aucune trace de deux chenaux dans la rivière Beauport.

W. Austin 2. Surveyor. — Saw no trace of another channel or of an island. The stumps of trees from X to Y prove there is no other channel between those points.

Lambly 3 — My impression is that previous to the existence of the wharf of 1852 the river took a straight course.

Grenier 4 — Je n'ai jamais remarqué plus d'un chenal dans la rivière Beauport. J'y ai canoté une partie de tous les jours *dans la belle saison*. Derrière les arbres il y avait une *baissoir* par où l'eau montait au bas du jardin de mon père. L'endroit qui ne se couvrait pas d'eau faisait une espèce de petite île durant les grandes mers. Dans les plus fortes mers l'île se couvrait, c'est sur l'île qu'étaient les arbres dont je parle.

Narcisse Faucher 5 — Après le quai l'eau coulait comme avant sa construction. On n'a pas arrêté l'eau en faisant le quai [illegible] on ne l'a pas bouché. [illegible]

F. Crépeau 6. — J'ai examiné le terrain particulièrement avant la bâtisse du dit quai, et suis certain qu'il n'y avait pas deux chenaux. *On a fini le quai huit jours après la Toussaint.*

Ed. Rocket 7. Agent for Defendant as farmer — Never saw more than one channel below mill.

A. Barbeau 8. — A ma connaissance la rivière n'a jamais eu qu'un seul chenal.

D. Giroux 9. — Depuis le pont à descendre au fleuve, la rivière n'a jamais eu à ma connaissance plus d'un chenal depuis 6 ans que je navigue.

N. Grenier 10. — Je suis certain qu'il n'y a jamais eu plus d'un chenal à partir du pont en descendant.

Maurice Marcoux 11. — Depuis 25 ans que je connais la rivière, je suis certain qu'il n'y a jamais eu qu'un chenal. *Dans les grosses eaux, l'eau repand partout, et ne sait pas le lit de la rivière.*

Joseph Picard 12. — Quand on a commencé le quai de 1852, *en septembre* il n'y avait qu'un chenal. Je n'ai pas connu le cours de l'eau avant le quai de 1851.

W. Wickstead 13. — Saw no trace of any island or channel, saw river for the first time in 1853. Trees could not have grown there had there been a stream of constantly running water.

François Gagnon 14. — Il y a 15 ans, j'ai travaillé pendant un mois à une maison pour le Défendeur et n'y ai jamais été depuis ni avant ce temps là. J'allais alors chercher de l'eau à la rivière ; je n'ai jamais vu qu'un seul chenal, et je n'ai pas vu d'île.

Pierre Gauvreau 15. — Pas de trace d'un autre chenal ni d'un île. Je dis positivement à cause des souches d'arbres *entre X et Y* qu'il n'y a pas eu de chenal *entre ces deux points* depuis 12 à 15 ans. Quand j'ai visité les lieux pour la première fois le quai de 1851 était presque fait.

E. T. Fletcher 16. — On Racey's plan there *is evidently a low spot behind the trees on island.* Am certain that for ten years there could have been *no channel at any point between X and Y.*

G. Grenier 17. — Je suis né sur ce qui forme maintenant partie de la terre du Défendeur. Je déclare que je n'ai jamais vu qu'un chenal *devant les bassis eaux.* J'ai vu une île vis-à-vis le "stone store." En 1848 quand j'ai laissé l'emplacement, *l'eau mangeait du côté du Défendeur. On ne cultivait que le haut de notre emplacement.*

Je suis en mauvaise entente avec le Demandeur.

G. Dunlevie, Ps. Surveyor. — Impossible that within the last 10 years there can have been a channel where stumps of trees were growing *between X and Y.* Did not know premises previous to wharf of 1852.

Langevin 19. — Jamais vu d'île ni deux chenaux. Je demeure à une lieue de là. Je les aurais vus dans le cours de 40 ans, s'il y en avait eu.

P. Filiau 20. — En 1853, j'ai travaillé pour le Défendeur. Je n'ai jamais vu deux chenaux *entre X et Y.*

Je suis sur le point d'acheter une terre du Défendeur.

William Murray 21. — Since I have known the premises in 1850, there has been but one channel, and no island *Defendant p[illegible] d[illegible] not p[illegible] [illegible]*

Ignace Morenci 22. — Je n'ai jamais connu de chenal du côté du Défendeur ; de sorte que le quai ne le bouche pas.

SYNOPSIS

Of Evidence in Appendix A as to the existence of a North East Channel or of some low ground to the Eastward of island answering as a channel in freshet time.

For.	Against
1 François Vallée,	1 Joseph Picard.
2 D[illegible] McCa[illegible],	2 Pierre Morin, "
3 A[illegible] McDonald,	3 William Austin, "
4 E[illegible]	4 Narcisse Fauchet "
5 P[illegible]	5 François Crepeau,
6 L[illegible]	6 Edward Rocket,
7 F. X. G[illegible],	7 Antoine Barbeau,
8 L[illegible]	8 David Giroux,
9 J. B. Bertrand,	9 Narcisse Grenier,
10 Michael Scott,	10 William Wickstead
11 Patrick O'Brien,	11 Pierre Gauvreau "
12 Benjamin Blais,	12 Gerald Dunlevie, "
13 J. B. Fortin,	13 Etienne Langevin,
14 G[illegible] Bisset,	14 Pierre Filiau,
15 J[illegible]	15 William Murray,
16 Ed. Henderson,	16 Ignace Morenci,
17 Lawrence McKenna,	17 François Gagnon,

Capt. Lambly 1. Formerly Harbour Master at Quebec

Angus Mcdonald 2.

P. Seguin 3.

Ls. Grenier 4.

F. X. Giroux 5.

Ad. Larue 6. Surveyor.

J. Picard 7. dit Destrois-maisons. Built both of Defendants wharves. Defendant told him he had another wharf to build.

Ls. Auger 8. Plaintiff's miller.

J. B. Bertrand 9. in Plaintiff's employ.

Michael Scott 10.

Edward Henderson 11. P. Filiau says he knows Henderson dislike the Defendant

George Bisset 12.

FOR.	AGAINST.
18 Captain Lambly, 19 Thomas Grenier, 20 Maurice Marcoux, 21 E. T. Fletcher, 22 Gabriel Grenier.	N. B. Witnesses marked thus * talk merely as to present appearances.

(Signed.) CHS. BAILLARGE.
EDW. STAVELY.

APPENDIX B.

Evidence adduced by Plaintiff on encroachment of wharf built in 1852 *by Defendant.*

Capt. Lambly 1. Formerly Harbour Master at Quebec

Wharf of 1852 built not on Defendant's own property but on public property. Used to boat up river Beauport to within sight of mill to see that the river was not obstructed *in performance with my duty.*

Angus Mcdonald 2

I state this "all the wharves on the Defendant's side of the river are encroachments on (I have known the premises since 1840 or so) the river and prevent the water from flowing through the whole of its different channels. Wharf of 1852 is an encroachment on river Beauport.

P. Seguin 3.

Le quai de 1852, est bâti dans la rivière Beauport, je ne dis pas dans le chenal.

Ls. Grenier 4.

A une place le quai de 1852 est étendu a peu près sept pieds dans la rivière au point X et au-dessus.

F. X. Giroux 5.

Je trouve le quai de 1852 tout-à-fait dans le milieu de la rivière, parce que comme je le comprends, la rivière allait du "stone store" jusqu'au quai B du Défendeur, et en allant en bateau j'allais partout. Il y a à des places deux pieds d'eau le long du quai du Défendeur et le long de ce quai B, le courant de la rivière descendait aussi fort que dans le milieu de la rivière.

Ad. Larue 6. Surveyor.

It is my opinion that the wharf of 1852 is an encroachment to the extent of one hundred and twenty six feet at spring tides. Do not see what use the wharf is to Defendant since the water ran both sides of it. Wharf of 1852, obstructs western or present channel.

J. Picard 7. dit Destroismaisons. Built both of Defendants wharves. Defendant told him he had another wharf to build.

J'ai bâti le quai du Défendeur le long de la rivière, non pas dans la rivière, pour enclore le terrein du Défendeur. Il peut y avoir de *deux à deux pieds et demi d'eau* qui coule le long du quai de 1852. (1853).

Ls. Auger 8 Plaintiff's miller.

Le quai de 1852 est bâti dans le millieu de l'ancienne rivière. Il y a 22 ou 23 ans, la rivière coulait plus au nord est

J. B. Bertrand 9. in Plaintiff's employ.

Le quai de 1852 est bâti dans le millieu de la rivière.

Michael Scott 10

Wharf of 1852 seems to me a complete encroachment on the river.—It is altogether in the river. It appears to me that the said wharf was built for the express purpose of annoying the Plaintiff and to any person engaged in the navigation of the river. I can see no other earthly reason for it. (to Def.) "I advise you to take it down and build a straight one along the back of it.

Edward Henderson 11. P. Filian says he knows Henderson dislike the Plaintiff

Wharves of 1851 and 1852 are encroachments on natural bed of river. *On 13th April,* 1853, *the distance between the wharf of* 1852 *at Z and the Plaintiff's wharf opposite was nineteen feet four inches.*

George Bisset 12.

Wharf of 1852, built on what used to be the channel of the river. Always thought Widow Grenier's lot formed part of channel of river.

B. Blais 13 Batelier	Quai de 1852, bâti dans le milieu de la rivière. Le Défendeur par ses quais à bouché la rivière.
Daniel Mc Callum 14	The beach is now covered by wharf of 1852.
C. Bitner 15	Le quai de 1852, qui est de travers dans la rivière.
John Fergusson 16	Wharf of 1852, that is built across the river.
F. Nadeau 17.	Le quai bâti en 1852, qui traverse en partie la rivière.
Jos Hardy 18	Ce quai se trouve situé, qu'il traverse la rivière en partie.

APPENDIX B. Continued.

Extracts from evidence adduced by Defendant on the encroachment of wharf, built by him in 1852.

P. Morin 1. Surveyor.	Il est probable que la partie Y du quai de 1852 se trouvait dans le lit de la rivière, au mois d'Avril, quand les eaux sont grosses.
W. Austin 2.	Wharf of 1852 does not in the least encroach upon the channel. There was upwards of a foot of water at point Y, when I measured it, in June, 1853. Point Z at edge of water but not in it.
T. Grenier 3.	Quai de 1852 bâti sur la terre où étaient les arbres.
N. Faucher 4. of Quebec Carpenter helped to build Defendant's Wharf.	Quai de 1852 n'empiète pas sur le chenal même, ça laisse le chenal plus large, car on l'a mis en dedans. On a coupé la lizière d'arbres et bâti le quai à a place. On n'était pas dans l'eau quand on a posé les premières flottes du quai de 1852, (September).
François Crépeau 5.	On a placé le quai de 1852, sur le terrain du Défendeur, et on a rélargi le chenal de son côté.
Augustin St. Hilaire 6.	J'ai aidé à faire le dit quai de 1852. Il est du long du bord de la rivière. Nous avons donner à la rivière de dix-huit à vingt pouces plus de largement. Je suis positif qu'au point X il y avait trois à quatre pieds entre la rivière et le quai.
N. Grenie 7.	Le quai de 1852 est sur le bord de ; et non pas dans la rivière.
M. Macoux 8.	Le quai de 1852 n'empiète pas le moindrement sur le chenal de la rivière.
Jos. Picard 9.	J'ai travaillé à la bâtisse du quai. Il est bâti le long de la rivière et non pas dans la rivière.
Francois Gagnon 10.	Quai de 1852 bâti sur l'écars. Il n'empiète pas sur la rivière.
Pierre Gauvreau 11.	Positif que le quai de 1852 n'empiète pas. Il n'y avait presque pas d'eau à Y quand j'ai visité le quai. *As compared with Racey's plan. I think Plaintiff's wharf has affected channel of river but that of Defendants in no way.*
Etienne Laugevin 12.	Le quai de 1852 empiète un peu dans la rivière, mais pas pour faire dommage.
W. Murray 13 Defendant procured me my present situation.	Wharf of 1852 does not encroach.

SYNOPSIS

Of Evidence in Appendix B as to encroachment of wharf of 1852,

For.	Against.
1 Captain Lambly,	1 Joseph Picard,
2 Angus McDonald,	2 William Austin,
3 Pierre Seguin,	3 Thomas Grenier,
4 Louis Grenier,	4 Norcisse Foucher,
5 F. X. Giroux,	5 François Crepeau,
6 Adolphe Larue,	6 Augustin St. Hilaire,
7 Louis Auger,	7 Narcisse Grenier,
8 J. B. Bertrand,	8 Maurice Marcoux,
9 Michael Scott,	9 François Gagnon,

10 Edward Henderson.
11 George Bisset,
12 Benjamin Blais,
13 Daniel McCallum,
14 Charles Bitner,
15 John Fergusson,
16 François Nadeau,
17 Joseph Hardy,
18 Pierre Morin.

These witnesses do not necessarily contradict the others, as many of the former deny an encroachment on the channel while most of the latter (for,) speak of the wharf as encroaching on the beach and as being an encroachment at high tide.

(Signed) CHS. BAILLARGE.
EDW. STAVELY.

APPENDIX C.

Extracts from evidence adduced by Plaintiff as to encroachment of wharf between the wooden and stone stores on Plaintiff's side. We will call it Plaintiff's wharf.

Frs. Vallée 1. Had a suit with Defendant 17 years ago. Defendant sold his losses.

Aucune partie du quai du Demandeur se trouve dans la rivière ou empiète sur la rivière. Il est comme il était anciennement quand j'y restais.

Lemieux 2.

J'ai travaillé au quai du Demandeur depuis le commencement jusqu'à sa fin. Il n'est pas dans le chenal mais sur le bord. On a travaillé à pied sec en faisant le quai. On a placé le premier morceau du parrement du quai à cinq à six pieds de la rivière on a rogné la longueur du quai au bout du "wooden store" de 4 pieds plus court qu'il était auparavant.

Ed. Jones 3.

At the time Plaintiff built his wharf the end near the stone store *appeared* to me to encroach on bed of river. *Mr. Racey showed it me and what he told me, made me think so.*

Ad. Larue 4.

At lower end a small corner of Plaintiff's wharf encroaches beyond the line of high tide on Racey's plan. There is also an encroachment about the centre of its length, of about four feet, beyond the high tide line on Racey's plan.

J. Picard 5.

En faisant le quai de 1851, j'ai vu faire celui du Demandeur, qui empiète sur la rivière, a peu près de l'épaisseur d'une flotte.

L. Auger 6.

Le Demandeur à fait son quai pour empêcher l'effet des grosses eaux sur son jardin. Il y a vingt deux ou vingt trois ans, le jardin du Demandeur était plus large. La rivière coulait alors plus au N. E. Depuis ça l'eau à mangé le jardin et l'a rétréci.

J. B. Bertrand 7. At service du Demandeur.

C'est moi qui ai fait le quai du Demandeur et je suis positif qu'aucune partie de ce quai ne se trouve dans la rivière. Il y avait un vieux quai, et on a fait le neuf exactement à la même place excepté que par places on a fait le quai plus chez le Demandeur.

M. Scott. 8

Dont see any alteration in Plaintiff's wharf except at lower end at wooden store, which appears to me longer a little.

Edward Henderson 9.

When I had the mill in 1832, *Plaintiff's wharf encroached more into the river, than it does now* some part of the ground together with some plum trees having been carried off by freshets.

J. Racey 10. Plaintiff took some of Racey's stones without his permission

Wharf behind wooden store is an encroachment of about twelve or fourteen feet. *Cannot say extent of encroachment.* Plaintiff 's wharf judging by plan of 1806 (Racey's plan) encroaches from stone store to wooden store. Dont know how much.

J. Hardy, 11

Je connais un quai qui a été *renouvelé* du côté du Demandeur. Je sais qu'il y en avait un auparavant.

APPENDIX C. Continued.

Extracts from evidence adduced by Defendant on encroachment of Plaintiff's wharf.

Wm. Austin 1

When I surveyed the premises, the Plaintiff's wharf did not encroach upon the river.

Pierre Morin 2

Quai du Dem. par plan de Bouchette (Racey's plan) empiète sur la rivière, a l'extremité Sud Est, derrière le "Wooden store" mais n'empêche pas le cours de la rivière. Je ne puis pas dire s'il empiète sur le cours de la rivière.

Ig. Veilleux, 3 — Quai du Dem. empiète en partant du hangar de bois ("Wooden store") de quinze à dix huit pieds.. Il y avait de la glace quand je l'ai vus. Je n'ai pas vu combien il empiète mais je sais qu'il empiète.

Nar. Grenier 4 — J'ai vu que les hommes se sont mis à l'eau pour faire le quai du Demandeur, mais je ne sais pas si ce quai empiète sur le chenal.

M Marcoux, 5 — Le quai du Demandeur par le bas empiète de dix à douze pieds sur la rivière en diminuant vers le haut, près du "stone store."

M. Wickstead 6. — Ground seems to have been eaten away a little on Plaintiff's side, since Bouchette's plan was made. River seems to have gained a little on Plaintiff's side. *No portion of* Plaintiff's wharf bulges out into the river, *though the outside is rounded.* Eastern corner of Plaintiff's wharf covers some of the land which on Bouchette's plan is shewn as being covered at high tide.

F. Gagnon, 7. J'ai fait des quais pour le Défendeur. — Le quai du Demandeur fait un ventre de saumon dans la rivière et chasse l'eau sur le Défendeur. Ce quai est dans la rivière. *J'ai connu l'endroit, il y a de cela quinze ans.* Je n'ai jamais demeuré dans Beauport. Il y a quinze ans, l'eau touchait au salage de pierre du hangard de bois.

G. Grenier, 8. J'ai pris la part du Défendeur parceque je pensais que le Demandeur devait perdre ce procès. Lives in one of Defendant's houses. — Le long du jardin du Demandeur, la rivière coulait autrefois plus au sud ouest. Le quai du Demandeur empiète sur le chenal de la rivière. Avant le dit quai la rivière entrait plus dans le jardin. Je suis positif que ce quai empiète sur le chenal de sa largeur (huit à dix pieds) à chaque bout et plus au centre.

G. Dunlevie 9 — Were it not for Plaintiff's wharf river would flow more to the south west behind the "wooden store." *I think there is an encroachment by Plaintiff's wharf 50 feet, up from behind wooden store, because my chain bearer could not pass at foot of wharf a chant nothing but boats.*

E. Langevin, 10. — C'est moi qui à bâti le quai du Demandeur. Il est dans la rivière ou passait le courant. Le quai empiete soit de 12 à 15 pieds.

P Filiau 11 — J'ai vu les hommes un jour travailler au quai du Demandeur dans l'eau jusqu'aux genoux. Ce quai empiète 7 a 8 pieds (plus loin) quatre a cinq pieds (plus loin.) Toujours que ce soit plus ou moins je suis positiff que ça empiète. Je prétends qu'il y à quarante ans *la rivière coulait le long de la ligne noire et jaune du plan de Racey et que le quai couvre la moitié du chenal.*

Wm. Murray, 12. Defendant procured me my present situation. — In 1852 to 1853 the channel extended further upon Plaintiff's property than is represented on Racey's plan. Encroachment between stone and wooden stores cannot be less than fourteen feet to twelve feet.

SYNOPSIS

Of Evidence in appendix C on encroachment of Plaintiff's wharf.

Pro.	Con.
1 Edward Jones,	1 François Vallée,
2 Adolphe Larue,	2 Antoine Lemieux,
3 Joseph Picard,	3 Louis Auger,
4 John Racey,	4 J. B. Bertrand,
5 Ignace Veilleux,	5 Michael Scott,
6 Maurice Marcoux,	6 Edward Henderson,
7 François Gagnon,	7 Joseph Hardy,
8 Gabriel Grenier,	8 William Austin,
9 Gerald Dunlevie,	9 Pierre Morin,
10 Etienne Langevin,	10 Narcisse Grenier,
11 Pierre Filiau,	11 William Wickstead.
12 William Murray.	

This evidence is not all contradictory, one part of another since some speak of positive encroachments and others of encroachments according to Racey's plan.

(Signed.) CHS. BAILLARGE.
EDW. STAVELY.

APPENDIX D.

Extracts from evidence adduced by Plaintiff on navigableness of River Beauport.

Angus Mc Donald 1. — Vessels I recollect could come up to the very mill door. It was perfectly possible for vessels to discharge grain at stone store and it is my impression they did. At low tide, the beach gets dry.

Ed. Jones 2. — Natural channel not navigable. River navigable at certain stages of the tide as far as mill. I have no doubt bateau could at high tide go to the mill. Think I have seen schooners at wooden store.

P. Seguin 3. — Rivière navigable en bas des quais de 1852, et jusqu'au moulin, dans les grandes mers avec petits bateaux. J'ai vu hiverner des bateaux à l'endroit du quai de 1851.

Ls. Grenier 4. — Du temps de M. McCallum, j'ai vu monter et charger un petit bateau à ras le moulin.

Ls. Gagnon 5. — De mon temps la rivière a été navigable dans les grandes mers jusqu'au moulin pour bateaux. Nous chargions à bras du moulin aux bateaux. C'était des bateaux tirant cinq à six pieds d'eau. Du temps de M. McCallum, les bateaux venaient charger au moulin cinq à six fois par année.

F. X. Giroux 6. Defendant was lawyer against him in a suit of contested election — Dans les grandes mers on peut aller jusqu'à vis-à-vis le moulin avec des bateaux tirant quatre pieds d'eau. Comme je le comprenais, la rivière allait partout depuis le quai B du Défendeur jusqu'au "stone store." J'ai chargé de la pierre au quai B. Il a hiverné des bateaux de 17 pieds au N. E. de la petite ile.

Ls. Auger 7. Plaintiff witness — Rivière navigable jusqu'au près du moulin, dans les grandes mers. J'ai vu une goëlette il y a vingt cinq ans décharger au hangard de bois.

J. B. Bertrand 8. — J'ai vu hiverner des bateaux vers le point Z.

M. Scott 9. — Have seen bateaux taken up as far as the mill. —I consider the river Beauport navigable, as far up as bridge. *Have seen vessels repaired and built on Defendant's side one hundred feet below bridge, twenty three years ago.*

F. Mercier 10. Navigateur — Rivière navigable. Je l'ai naviguée moi-même depuis quinze à seize ans, avec des bateaux tirant six pieds d'eau.

P. O Brien 11 — River navigable up to mill at high tides.

Edward Henderson 12 — River navigable to mill, have seen bateaux going up as far as the bridge. River has been used to convey grain to and from the mill.

G. Bissett 13 — River navigable for small craft, such as bateaux as far as mill at high tides. I myself have brought bateaux up as far as within fifty feet of mill.

J. Ross 14. Defendant's stone store was built on my consent. — Have seen bateaux as far up as garden, adjoining stone store. In extreme high tides, might go up higher. Said bateaux engaged in taking grain to mill and conveyance of goods for Mr. Duchesnay.

W. Ware 15. — River navigable to high water mark. Tides does not rise beyond arch at turnpike road.

B. Beals 16. Balancier. — Rivière navigable jusqu'au chemin du Roi, jusqu'au pont. J'ai navigué la rivière partout, en haut et en bas, depuis vingt trois ans, avec des bateaux charges, tirant six pieds d'eau chargeant de la pierre et du grain, jusqu'en 1851. J'ai eu des bateaux de seize, quatorze et dix huit pieds de largeur.

J. B. Fortin 17. J'ai eu un proces avec le Défendeur. — Rivière navigable, et dans les grandes mers, les bateaux venaient tout près du moulin. On peut charger au moulin. J'ai eu le moulin douze à treize ans.

APPENDIX D. Continued.

Extracts from evidence adduced by Defendant on navigableness of river.

Capt. Landly 1. Formerly Harbour Master of Quebec. — The river Beauport is a small river but is navigable at high water, to near the mill for bateaux, small schooners and so forth. It resembles the river St. Charles in that respect only the last is much more roomy.

T. Grenier 2 — Bateaux à ma connaissance montaient jusqu'au bout d'en bas de l'emplacement de mon père (un arpent plus bas que le pont)

J. Fihau 3

Je n'ai pas connaissance que de mon temps (il y a trente ans) l'on ait monté du grain en bateaux jusqu'au moulin.

D. Giroux 4

Dans l'état actuel de la rivière un bateau peut monter jusqu'au pont, mon bateau a hiverné plus bas que Z mais on pourait aisément aller plus haut, il y avait de l'eau suffisament pour cela.

Maurice Marcoux 5

Dans les grandes mers on peut monter jusqu au pont

G. Grenier 6

Quand j'ai parlé avec Louis Grenier j'ai pris la part du Defendeur, parceque je pensais que le Demandeur devait perdre ce procès.

Je n'ai jamais vu de goëlettes ou bateaux ou aucune espèce de bâtiments monter jusqu'au hangard de pierre ("stone store") pour décharger ou pour charger. Rivière Beauport navigable pendant les grandes mers. Moi-même j'ai monté mon bateau jusqu'à mon emplacement vis-à-vis du moulin. Il y a 22 ou 23 ans une goëlette a été jetée par la haute mer dans le jardin du Demandeur. Pendant 18 ans j'ai moi-même monté une vingtaine de cordes de bois en cajeux tirant deux pieds et huit pouces d'eau.

P. Fihau 7

Je n'ai jamais vu de bateaux ou aucune autre espèce de bâtiments venir au moulin pour décharger ou charger. Dans les grandes mers un bateau pourait y monter.

W. Murray 8.

River navigable at high tides, vessels with loads generally take a full day to unload and get out.

SYNOPSIS

Of evidence in Appendix D on navigableness of Beauport River at high tides.

For.	Against.
2 Witnesses.	No witnesses.

(Signed.)

CHS. BAILLARGE.
EDW. STAVELY.

APPENDIX E.

Extracts from evidence adduced by Plaintiff on wharf of 1852 being an obstruction to the navigableness of River Beauport.

Daniel McCallum 1.

River not as free now as it was for navigable purposes. The space of ground or *beach* is now covered by wharf of 1852.

Angus McDonald 2

Wharf of 1852 is an encroachment to the extent of rendering the river useless for floating lumber or vessels. River ruined for navigable purposes.

Grégoire 3

Il y a la même facilité pour la navigation mais le quai gêne par ce que c'est trop serré

Giroux 4.

La facilité pour monter les bateaux n'est pas la même par ce que la rivière se trouve trop étroite entre le hangard et le quai.

Ls. Auger 5.

Un bateau n'est plus capable de virer maintenant que le quai est bâti.

J. B. Bertrand 6

Il n'y a pas depuis le quai de 1852 la même facilité pour monter des bateaux.

M. Scott 7.

River now injured very materially for navigable purposes.

Ed. Henderson 8.

Large bateaux such as are used for grain cannot now get up past the point Z.

G. Bissett 9

Width of river used to be sixty to seventy feet and is now contracted by wharf of 1852. Wharf is built where vessels used to lie. If two bateaux came one would have to wait till the other had passed, discharged her cargo and returned.

W. Ware 10.

Wharf has narrowed the channel and appears to have been built for that purpose.

B. Blais 11.

J'ai navigué la rivière en l'automne de 1852, mais pas si haut qu'avant le quai de 1852. La recoude du quai est bâti dans le millieu de la riviere. Le quai de 1852 bouche l'entrée des bateaux et des bâtiments. Navigation [illegible]

J. B. Fortin 12. Le Defendeur a pris un tiers de la rivière. Il a bouché la rivière par son quai le changement a rétréci la rivière d'un tiers. Le quai gêne, ça doit gêner.

APPENDIX E. Continued.

Evidence adduced by Defendant on his wharf of 1852 *being an obstruction to navigableness of river.*

D. Giroux 1. Je dis que dans l'état actuel de la rivière un bateau peut monter jusqu'au pont. On ne peut pas virer un bateau dans le bout d'en haut et on ne pourait pas non plus le faire avant la bâtisse du quai de 1852.

M. Marcoux 2 On peut monter des bateaux, les virer, les descendre, les hiverner comme auparavant.

SYNOPSIS

Of Evidence in appendix E as to wharf of 1852 *being an obstruction to navigableness of the river Beauport.*

For.	Against.
1 Daniel McCallum.	1 David Giroux,
2 Louis Gagnon,	2 Maurice Marcoux.
3 F. X. Giroux,	
4 Louis Auger,	
5 J. B. Bertrand,	
6 Michael Scott,	
7 Edward Henderson,	
8 George Bisset,	
9 William Ware,	
10 Benjamin Blais,	
11 Angus McDonald,	
12 J. B. Fortin,	

(Signed.) CHS. BAILLARGE.
EDW. STAVELY.

APPENDIX F.

Extracts from evidence adduced by Plaintiff as to wharf of 1852 *being an obstruction to the working of the mill.*

D. McCallum 1. Great body of water coming across mill race would interfere with working of Plaintiff's mill because wharf of 1852 curtails the outlet.

Angus McDonald 2 Wharves on Defendants side are encroachments and have to a great extent destroyed the value of the mills. My opinion is that wharf of 1852 would have the effect of preventing the free discharge of the river and stop or retard the mills by back water in the case of floods. Wharf of 1852 has greatly reduced the value of the property as a mill.

Ed. Jones 3. Defendant's wharf of 1852 as a necessary consequence would retard reflux of tide and mill may have been retarded especially when tide is receding.

[illegible]

Je pense que le Défendeur, par son quai de 1852, a tout tort au Demandeur; et par rapport à l'embouchure de la rivière qui se trouve trop étroite, les eaux mettent beaucoup plus de temps à descendre la rivière, par la susdite cause. Ça doit oter de la valeur au Moulin. Je ne donnerais pas le même prix pour le moulin à présent. Le Demandeur a souffert des dommages par rapport aux eaux venant de la rivière Beauport et par rapport aux eaux des marées.

[illegible]

Il pourrait se faire que le quai bâti par le Défendeur en 1852, aurait l'effet, pendant les grosses eaux, de chasser les eaux sur le [illegible] *Dans le place [illegible] neuf pieds quatre pouces [illegible] mesures. Anglaises, entre les deux quais des [illegible] plus étroit. Dans les grosses eaux*, l'eau n'a pas tout à fait la même facilité de descendre.

[illegible]

Dans les grosses eaux, la rivière vient frapper le pan du quai de 1852 et fait refouler l'eau du moulin et retarder le moulin. Le quai fait tort au moulin. L'eau de la chutte (de la rivière) étant la plus forte vient tomber dans le canal du moulin et dans les grandes mers ça retombe l'eau dans le canal du moulin. Je ne donnerais pas le même prix qu'auparavant pour le moulin, parceque l'eau de la chute nuit trop.

[illegible]

Comme la rivière, à la sortie du canal du moulin, se trouve étroite, je pense que le quai de 1852 peut avoir l'effet de faire [illegible] l'eau dans le canal du moulin. Je pense que dans la hauteur des eaux ça pourrait noyer la roue du moulin.

[illegible]

Le D[illegible] en 1850, [illegible] au quai à l'endroit de celui de 1852, [illegible]

[illegible]

Dans les grosses eaux l'eau se trouve gênée [illegible] goulle à cause du quai de 1852, et ça eu l'effet de faire [illegible] la roue dans l'eau, dans les grosses eaux, et modérer le travail du moulin. Dans les basses eaux, le quai de 1852 ne fait aucun mal.

[illegible]

Le quai de 1852 fait noyer la roue dans l'eau et empêche de travailler le moulin. Le moulin a arrêté [illegible] depuis que le quai de 1852 est bâti. Ce quai cause des [illegible]

[illegible]

Wharf seems to have been built for the express purpose of annoying the Plaintiff. Wharf of 1852 causes back water on [illegible] Mill now worth from [illegible] 1852 [illegible]

[illegible]

Wharf of 1852 [illegible] water [illegible] mill race throwing water back [illegible] water. I would [illegible] much for the mill as before wharf was built.

[illegible]

Wharf of 1852 [illegible] *freshes* it must throw back water [illegible] a thing has occured. The current [illegible] to run over, before the wharf was built. I have several times [illegible] back water by freshets since wharf of 1852.

[illegible]

[illegible] avoir causé du dommage.

[illegible]

[illegible], j'ai pensé que c'était le quai de 1852 [illegible]

[illegible]

Vers Mars 1852 [illegible] ant Z entre Y et Z qui faisait [illegible] était plus haute au dessus qu'au dessous du point Z par la digue de glace.

[illegible]

Water in Western channel of McCarthy's present channel cannot flow as it did in 1792 on account of wharf of 1852.

[illegible]

Wharf of 1852 built across the river [illegible] current, and it passes over the mill race and keeps back-water up on the wheel. [illegible] incident on existence of wharf is that it causes [illegible] There would be no obstruction too, at all to the working of the mill, if the river did not cross over channel of the tail race. For instance if a portion of the wharf of 1852 were cut away and the flood water from river Beauport made to pass through that opening no obstruction would occur. Jams of [illegible] river to be like a canal with locks, each jam keeping the water back. Water was [illegible] higher at foot of tail-race [illegible] *there had* [illegible] of 1852.

[illegible]

Je n'ai pas connaissance que de mon temps la rivière avant le quai de 1852 ait jamais été gênée par la glace.

[illegible]

Le canal est trop court et c'est le quai de 1852 qui empêche de descendre l'eau à la grève.

J. Watterson 21. Ice was jammed between wharf of 1852 and plaintiff's wheel and elsewhere higher up, and caused water to lie like steps of stairs [illegible] flow [illegible] on mill wheel. *I consider the wharf of 1852 the obstacle that causes the [illegible] because [illegible] narrowing of the channel* which causes the water to rise which they would not do if the [illegible] had a larger space to flow over. Ice jams above mentioned were observed by me on the 17th, 18th, 19th and 21st of March 1859.

L. McKenna 22. Previous to the wharf of 1852, water had more room to flow than it has at present.

P. Keogh 23. I worked at making holes in the ice to ascertain where water was stopped that went back upon the water wheel through the means of that wharf that is crossing the river. By means of that wharf water flows over into tail race and throws back water upon the wheel.

J. Hardy 24. Le quai de 1852 se trouve situé, qu'il croise la rivière en partie et gêne par le retrécissement du passage de l'eau.

APPENDIX F. Continued.

Extracts form evidence adduced by Defendent, as to his wharf of 1852 being an obstruction to the working of the mill.

Austin 1. Wharf of 1852 does not obstruct flow of water, and is necessary to protect his property.

F. Giroux 2. Le quai de 1852 n'a nullement rétréci le chenal de la rivière au point Z. Je ne sais pas pour le bout d'en bas.

M. Marcoux 3 *Dans les grosses eaux, l'eau répand partout et je ne sais pas le cours de la rivière.*

W. Wickstead 4. The wharf of 1852 has no effect with regard to tides and is beneficial, if any thing but *I dont say it would be so with regard to freshets.* It is possible that *during freshets* wharf may check and divert natural current of water.

E. T. Fletcher 5 It appears to me that wharf of 1852 cannot retard ebb of tide.

G. Dunlevie 6 Do not think that wharf of 1852 can force stones or gravel up mill-race.

SYNOPSIS

Of evidence in Appendix F as to wharf of 1852 being an obstruction to the working of the mill.

For.	Against.
1 Daniel McCallum,	1 William Austin,
2 Angus McDonald,	2 David Giroux,
3 Edward Jones,	3 William Wickstead,
4 Pierre Séguin,	4 E. T. Fletcher,
5 Louis Grenier,	5 Gerald Dunlevie,
6 Louis Gagnon,	
7 F. X. Giroux,	
8 Joseph Picard,	
9 Louis Auger,	
10 J. B. Bertrand,	
11 Michael Scott,	
12 Patrick O'Brien,	
13 Edward Henderson,	
14 J. B. Fortin,	
15 André Mathieu,	
16 François Nadeau,	
17 Adolphe Larue,	
18 John Fergusson,	
19 Pierre Robitaille,	
20 Chs. Bitner,	
21 John Waterson,	
22 Lawrence McKenna	
23 Patrick Keough,	
24 Joseph Hardy,	
25 Maurice Marcoux.	

The evidence "for" is mostly to the effect that the wharf of 1852 is an obstruction, not at low water and in the ordinary state of the river but during high tides and freshets. The evidence "against" does not contradict the statements of the witnesses "For" but merely talk of wharf of 1852 with regard to its effect on the ordinary flow of the river and its obstruction to the ebb of the tide. Maurice Marcoux one of the witnesses adduced by Defendant is entered in the list. "For" as from what he says (see extract) it may be inferred that in freshet time if wharf were not there water would flow on unobstructed.

(Signed.) { CHAS. BAILLARGE.
{ EDWD. STAVELEY.

APPENDIX G.

Extracts from evidence adduced by Plaintiff as to stones behind [illegible] Store, and at foot of Plaintiff's wharf and as to obstruction of River [illegible], incident thereon.

[illegible]

[illegible]

APPENDIX G. Continued.

Extracts from evidence adduced by Defendant on the same subject.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Cont. Dale 10 — In Mr. McCallum's time, water from mill-race ran quite close to the rear wall of the stone store. Within three years, a cart load or two of stones have been placed behind the stone store causing the water to run differently from what it did before. The stones I allude to, are between upper end of [illegible] and engine house.

SYNOPSIS

Of Evidence in Appendix G as to stones behind Stone Store etc., and as to any obstruction caused thereby etc.

The witnesses on both sides agree as to stones having been seen behind stone store. The effect being according to some of them to throw the river over to the Defendant's side or interrupt the flow of water from tail race.

(Signed.) CHS. BAILLARGE.
EDW. STAVELEY.

APPENDIX H.

Evidence adduced by Plaintiff on obstructions caused in tail-race and on the formation of the point P between the channel of river and lower end of tail-race. Also miscellaneous evidence.

J. Gorman 1. — Ca pourrait se faire que le quai de 1852 serait cause que dans les grandes eaux elles viendraient trapper [illegible] stone store.

L. Auger 2. — Le quai de 1852 cause un remou au bout du canal du moulin, et ramasse le sable et les gravois.

J. B. Ber[illegible] 3. — On n'a jamais eu à déglacé le canal du moulin, mais on a déglacé le collet de la roue (the shaft). Le quai de 1852 a causé un remou au bout du canal du moulin et a ramassé sable et gravois. Les grosses eaux faisaient remplir de vidanges et de gravier le canal du moulin, même avant la construction du quai, mais depuis le quai le moindre petit coup [illegible] qui venait empusa[illegible].

[illegible] 4. — Le quai de 1852 renvoye l'eau qui mange les terres du coté du Demandeur.

A. Larue 5. — Flow of water in channel obstructed by gore of land (supposed to mean P) behind stone store.

J. Ferguson 6. — Every freshet causes an accumulation of sand and gravel which fills up channel of tail race.

[illegible] — Je n'ai pas connaissance de mon temps d'avoir eu à déglacer le canal du moulin.

[illegible] — Dans les dégèles du printemps on avait notre habitude de couper la glace dans le canal du moulin. Je trouve le canal du moulin rempli et dans la même place que de mon temps.

L. McKenna 9 — Water of mill race since wharf of 1852 is not able to flow straight on as it did before takes a turn round and then goes straight along.

P. Keough 10 — In Plaintiff's employ since 1850 or dependant on my [illegible] — According to my knowledge it was never necessary to cut away the ice from tail race in spring. The Defendant never saw me take stones from his side and throw them on the Plaintiff's side. I worked at foot of tail race to clear out the accumulation of stones and gravel, caused by the wharf of 1852.

J. Ferguson [illegible] — Tail race has not been changed in any way. Mill race by cause of wharf of 1852 become filled up, level with top of bank and I have worked in the tail race to clean out sand and gravel caused by freshets. No stones were ever put at the bottom of the point P.

APPENDIX H Continued.

Evidence adduced by the Defendant.

[illegible] 1 — Do not think wharf of 1852 can force stones or gravel up [illegible]

P. Martine 2. Je travaille a la journée pour le Defendeur.

Je connais la pointe P, parceque le Défendeur me l'a montré. J'ai remarqué que l'eau s'en va sous le quai du Défendeur. C'est que c'est trop haut du côté du Demandeur a cause des pierres. Je crois que les pierres sur le point P ont été mise là par main d'homme pour envoyer l'eau du côté du Défendeur. L'eau n'aurait pas pu mettre ces pierres là comme je les ai vues.

Janet Daly 3.

I am not positive whether the point of land P between the channel and the mill race was as long 20 years ago as it is now, but I am positive a point existed on account of the trees growing there.

H. M. Jones 4

Saw stones placed artificially and diagonally behind stone store (supposed to mean point P) so as to drive the water against the Defendant's wharf and prevent it from flowing along stone store as formerly. I do not recollect anything in the way of a wall or bulwork on the north east side of the point P, nor do I recollect how the water use to flow there.

Ignace Mercury 5. Lives in one of Defendants houses.

La pointe P est plus longue qu'elle n'était autrefois d'une quarantaine de pieds ce qui donne plus de terrain au Demandeur, ça été alongé à force de jeter de la pierre sur le bout. Cette pierre est arrangé en manière de *mur en pierre sèche* du côté de la pointe qui fait face au terrain du Défendeur. Cela chasse l'eau sur le terrein du Défendeur et sous le dessous de son quai. Avant l'existence de la pointe P passait plus haut vers où finissent les arbres, tout haut dans le canal du moulin et piquait sur le hangard de pierre. *Le mur dont j'ai parlé existe actuellement* et peut avoir deux pieds de haut et une quarantaine de pieds de long. Il n'y a pas de pierre du côté du Défendeur parceque les hommes du Demandeur les ont prises et jetées du côté du Demandeur. *Il n'y en avait pas là ce matin j'en suis positif.* Il m'est arrivé six fois et même plus de voir des hommes au service du Demandeur travaillé dans la rivière et prendre des pierres du côté du Défendeur pour les jeter du côté du Demandeur. Ils mettaient ces pierres au bas du hangar de pierre du côté du quai du Demandeur.

G. Grenier, 6. Je suis en mauvaise entente avec le Demandeur. Helivsimon of Defendants houses

Lors de l'acquisition du moulin par le Demandeur la rivière dans la partie de son parcours depuis le pont jusqu'au point N coulait plus au sud ouest qu'elle ne fait aujourdhui, et le Demandeur à pour cela plus de terrain qu'il en avait autrefois et le Défendeur en a moins.

SYNOPSIS

Of evidence in Appendix H.

From all this evidence it may be inferred that the point P is mostly composed of the stones, gravel and sand, cleared out of the tail race and formed by the action of the river itself during freshets.

(Signed.) CHS. BAILLARGE.
EDW. STAVELEY.

APPENDIX I.

Evidence adduced by Plaintiff on former size of water wheel.

E. Henderson 1.

In 1831 and 1832 the diameter of the mill wheel may have been from nineteen to twenty feet from the fact of the flume having been raised. I infer that the wheel must have been enlarged in diameter or that the shaft must have been raised.

Jean Déry, 2.

En 1834 la roue du moulin pouvait avoir dix huit pieds de diamètre plus ou moins *je ne l'ai jamais mesuré.*

Chs. Bitner 3.

Je crois que de mon temps la roue était de dix-sept à dix-huit pieds. *Je ne l'ai jamais mesurée.*

P. Keough 4

I think that eighteen years ago the size of the mill wheel was twenty feet.

G. Bisset. 5

In 1835 to 1838 the wheel was about twenty feet.

EVIDENCE

Adduced by Defendant on the same subject.

G. Grenier, 1.

Je sais que la roue est plus grande maintenant qu'avant le temps du Demandeur.

SYNOPSIS

Of Evidence in Appendix I.

The size or diameter of the mill wheel previous to Plaintiff's time must have been about twenty feet. The evidence of the two millers Henderson and Bisset corroborated by that of Keough, being more reliable than that of the other witnesses who only speak approximately.

(Signed) CHS. BAILLARGE.
EDW. STAVELEY.

APPENDIX K.

Evidence adduced as to space beneath mill wheel before Plaintiff's time.

Ed. Henderson. 1. In 1831 and 1832 the distance beneath the wheel may have been from eighteen to twenty four inches.

P. Robitaille 2. En 1836 L'espace sous la roue pouvait avoir été de sept à huit pouces.

Jean Dérv 3. En 1834 il y avait treize à quatorze pouces d'espace sous la roue.

Chs. Bitner 4 Du temps de M. McCallum il pouvait y avoir de quinze à dix huit pouces d'espace sous la roue.

P. Keough 5. I think that eighteen years ago the space beneath the wheel was thirteen inches.

Ls. Auger 6. Il y a vingt neuf ans il pouvait y avoir alors de douze à quinze pouces d'espace sous la roue.

G. Bisset. 7. In 1835 to 1838 as near as I can remember, the space beneath the wheel must have been nine to twelve inches. I did not measure it but *say so because it must have been so.*

SYNOPSIS

Of evidence in appendix K.

Leaving out the extreme of twenty four inches and adding all the other spaces and dividing by the number thereof we obtain thirteen inches nearly for the probable space beneath the wheel previous to Plaintiff's time.

(Signed.) CHS. BAILLARGE.
EDW. STAVELEY.

APPENDIX L.

Evidence adduced as to depth of water allowed on wheel previous to stopping it.

Ls. Auger. 1. Meunier du Demandeur. Quand la roue trempe trois pouces dans l'eau on s'apperçoit que ça fatigue les mouvements. Quand il y a neuf pouces d'eau dans les godets (buckets) il faut arrêter pour pas briser les mouvements. Plus l'eau monte sur la roue plus il faut mettre d'eau par en haut pour compenser la perte de force et ça abime tout et moud mal.

Geo. Bisset 2. As soon as the tide water touches the bottom of the wheel, it diminishes the power; but we let the wheel go as long as she would, by adding more water from above, if we had any. We did not let it go until it stopped of itself but stopped it when it began to lag. When there was plenty of water from above we might have let the wheel be submerged a foot more or less, before we stopped it. I mean a foot from the under edge of the buckets.

J. Ferguson 3 Plaintiff's Miller. Immediately the water touches the rim of the wheel, I always stop the mill myself in case of danger. Some time ago an accident occured by which we broke some of the cogs of the pinion wheel, the strain occured from having worked the mill while there was back water on it.

P. Robitaille 4 En 1836 nous laissions monter six a huit pouces d'eau en dedans de la semelle de la roue avant de l'arrêter.

Chs. Bitner 5. Ordinairement on ne doit pas laisser monter d'eau sur le fonds (inside rim or sole) de la roue avant de l'arrêter.

L. McKenna 6 Wheel used to stop of necessity when there were two to two and a half feet of water on it.

Ed. Henderson 7. Wheel must stop when there are high tides, in [illegible] to two feet of water on it. Every inch of water on wheel requires additional water on above to propel it, which would have the effect of breaking the wheel [illegible] stopping the mill. I stopped the wheel the moment the water reached the sole or inside rim of the wheel.

J. Dery 8. Il y a vingt cinq ans on arrêtait la roue lorsqu'il y avait six pouces d'eau sur la semelle.

SYNOPSIS

Of Evidence in Appendix L.

The average exposure, from the evidence, would be about fifteen inches from the over edge of the buckets, obtained by adding the [illegible] given by all the witnesses and dividing the sum by the number of separate depths.

(Signed.) CHS. BAILLARGE'.
EDW. STAVELEY.

APPENDIX M.

Extracts from evidence adduced by Plaintiff on duration of stoppage of mill-wheel previous to the construction of Defendant's wharf of 1852.

D. McCallum 1 At very high tides, mill used to stop a certain time, during my time, (1810).

Ls. Gagnon 2. De mon temps, il y a de cela vingt quatre ans, les grandes mers faisaient arrêter le moulin, au meilleur de ma connaissance de 1½ à 1¾ heures au plus. Le moulin arretait pendant toutes les grandes mers.

Moses Scott 3 In my time (twenty three years ago) I have seen the high tide sometimes stop the mill, for two hours but very seldom, it was generally for about an hour and only during very high tides and very seldom.

Louis Auger 4 Il y a vingt neuf ans, j'ai mene le moulin moi-même. Nous arrêtions un heure et demi a deux heures. La roue actuelle est la même qu'il y avait au moulin quand j'y suis entre, la seconde fois avant le quai de 1852. Nous arretions alors de deux à deux heures et demi et dans les plus grandes mers trois heures.

Geo. Bisset 5. In 1835 to 1838 the mill used to stop from two and a half to three and three and a half hours, and at extreme high tides four hours.

Ed. Henderson 6 In 1831 and 1832 in my time the wheel only stopped during spring tides of spring and fall. Usually about two to two hours and a half, and during very high tides, driven by a strong easterly wind as much as three hours.

P. Robitaille 7 En 1836 j'ai resté quatre ans au moulin du temps de Bisset. Le moulin arrêtait abondans les grandes mers du printemps et quelque fois dans l'automne et seulement dans les gros vents de Nord Est. Jamais le moulin n'est arrêté l'hiver par les hautes mers le moulin arretait trois et quelque fois quatre jours de suite dans les grande mers, de trois heures à trois heures et demie, et quelque fois quatre heures par marée. Ce n'est que dans les grande mers de Mai que le moulin arrêtait ainsi quatre heures.

Jean Déry 8. Il y a vingt cinq ans le moulin arrêtait dans toutes les grandes mers de l'été aussi bien que du printemps, mais pas aussi longtemps dans l'été. Le moulin arrêtait plusieurs jours matin et soir un et demi à deux et demi a trois heures. *Quand il arrêtait trois heures* je pense que c'était la glasse du canal du moulin qui empêchait de sortir l'eau et alors je la faisais boucher.

Chs. Bitner 9. J'ai travaillé au moulin il y a trente six ans. La roue arrêtait dans les grandes mers du printemps et de l'automne de deux heures à deux heures et un quart. Quelquefois que la haute mers n'aurait restée que deux heures sur la roue, elle y restait trois heures par un gros vent de N. E. Du temps du Demandeur, avant le quai de 1852 la roue arrêtait comme du temps de M. McCallum, et cela pendant sept a huit ans après que le Demandeur est devenu propriétaire.

McKenna 10. Previous to the wharf of 1852, it was usual for mill to stop at high tide spring and fall from one, to one and a half, to two hours, or a little more perhaps as the wind blew.

G. Bertrand 11. Meunier J'ai été quatre ans et demi dans l'emploi du Demandeur avant le quai de 1852. Le moulin alors arrêtait dans le printemps et dans l'automne, quand il ventait fort Nort Est, soit de deux a trois heures et quand il arrêtait ainsi trois heures, c'était dans les gros vents N. E. et dans les grandes mers de Mai.

P. Keough 12. The longest time I ever knew the mill to stop 18 years ago was two hours and a-half.

APPENDIX M. Continued.

Extracts from evidence adduced by Defendant on duration of stoppage of mill wheel previous to wharf of 1852.

J. [illegible] Vers 1830 j'ai travaille dans le moulin six à sept ans, la mer arrêtait alors le moulin pendant une a une heure et demi à chaque marée. J'en suis certain pour l'avoir vu de mes yeux.

G. [illegible] Avant le quai de 1852 j'ai connaissance que le moulin arrêtait deux à trois heures, pas plus. *Je trouve que la mer monte beaucoup moins haute à présent qu'il y a une quinzaine d'années.*

W. Murray 3. Previous to wharf of 1852, mill used to stop from one and a half to two hours and at very high tides, more. I might say four hours. I believe I have seen it unable to work for as much as four hours. To the best of my knowledge I have seen the mill stopped from one and a half to two hours, caused by the flow of the tide. I have never seen the mill stopped four hours during the same tide. To the best of my knowledge, I have seen the mill stopped four hours during the day.

SYNOPSIS

Of evidence in Appendix M as to duration of stoppage of mill wheel during high tides previous to wharf of 1852.

1 Louis Gagnon	From	1½	to	1¾	hours.
2 Michael Scott	"	1	"	2	"
3 Louis Auger	"	1½	"	3	"
4 George Bisset	"	2	"	3	"
5 Edward Henderson	"	2	"	3	"
6 Pierre Robitaille	"	3	"	4	"
7 Jean Dery	"	1½	"	2½	"
8 Charles Bitner	"	2	"	2½	"
9 Lawrence McKenna	"	1	"	2	"
10 J. B. Bertrand	"	2	"	3	"
11 Patrick Keough				2½	"
12 Joseph Filiau	"	1	"	1½	"
13 Gabriel Grenier	"	2	"	3	"
14 William Murray	"	1½	"	2	"
		22		35½	

Average equal to..... 1¾ to 2½
Average of averages..... 2¼

(Signed.) CHS. BAILLARGE.
EDW. STAVELEY.

APPENDIX N.

Extracts from evidence adduced by Plaintiff as to mill not having stopped previous to wharf of 1852 from any other causes than the high tides.

Ed. Hooker 1 — In my time, 1831 and 1832, mill never stopped by spring freshets, neither do I remember it was ever stopped from ice jams in the vicinity previous to wharf of 1852.

[illegible] 2 — I am not aware that the mill ever stopped by ice jams in the spring, causing the water to rise. Nor I am aware of the mill ever having been stopped in my time by spring freshets.

[illegible] — Je n'ai jamais connaissance avant le quai de 1852 d'avoir vu arrêter le moulin par les grosses eaux de la rivière Beauport. Ça ne m'est jamais arrivé à moi-même avant le dit quai.

[illegible] 4 — Je n'ai pas connaissance que le moulin ait jamais arrêté par les grosses eaux de la Rivière Beauport dans les pluies et dégels du printemps avant le quai de 1852.

J. Dery — Je n'ai pas connaissance que jamais le moulin n'ait arrêté dans mon temps par les grosses eaux de la rivère Beauport. Je ne me rappèle pas que jamais il soit venu un refoulis d'eau par la glace qui ait fait arreter le moulin.

Cas. Bilodeau 6 — Je n'ai pas connaissance que jamais de mon temps les grosses eaux du printemps aient fait arreter le moulin. Je ne me souviens pas que jamais le moulin ait arrêté par des debacles de glace.

L. McKenna 7 — Previous to wharf of 1852 mill did not stop by freshets.

J. B. Bilodeau 8 — Je n'ai pas connaissance que de mon temps la roue du moulin ait arrêtée par les grosses eaux de la rivière Beauport.

P. Kennedy 9 — At that time (eighteen years ago) there was nothing but the tide that caused the mill wheel to stop. I never knew it to stop from [illegible].

SYNOPSIS OF APPENDIX N.

It is asserted by nine witnesses and not contradicted by any on the Defendants side that previous to the construction of the wharf of 1852 the mill never stopped to the witnesses knowledge, either by freshets of the river Beauport or by jams of ice in the spring.

(Signed.) CHS. BAILLARGE.
EDW. STAVELEY.

APPENDIX O.

Extracts from evidence adduced by Plaintiff as to the mill having stopped since the construction of the wharf of 1852 by freshets and jams of ice.

[illegible] 1 — In March, 1859 I noticed that the water was raised up in the wheel so far as to cause it to stop. I was informed to be between the wharf of 1852 and Parent's wharf and elsewhere [illegible] the lake steps or stairs, and made it flow back on mill wheel [illegible] the wharf of 1852 was the cause of that caused the jam of ice. Ice jams above mentioned were caused by ice on the 17th, 18th, 19th and 21st of March.

[illegible] 2 — I was [illegible] Plaintiff's employ after wharf of 1852, mill at that time used to stop longer [illegible] I noticed it stopped also by freshets which did not occur previous to the wharf of 1852.

J. B. Bilodeau 3 — Il y a quelque temps et demi (1855) que j'ai laissé le moulin et sur les dernières années que je le tenais la roue stoppait depuis le quai de 1852 le moulin arrêtait plus longtemps qu'avant que le quai fut fait. Dans le temps que j'ai laissé le moulin les grosses eaux de la rivère Beauport arrêtaient [illegible] le moulin. Le moulin a arrêté plus souvent depuis que le quai de 1852 est fait. Le quai fait des gonflements d'eau et empêche la roue dans l'eau.

F. Rocket 4 — This year the high tide to stop for over five hours per tide, the longest time I ever knew it to stop before the wharf was built was two hours and a half. In March last mill stopped from the 19th to 21st. No [illegible] was done during that time the water wheel being submerged. I worked at making a hole in the [illegible] to allow the water to go back upon the mill wheel.

Cas. Bilodeau 5 — Depuis le quai de 1852, les grosses eaux ont fait arreter le moulin indépendemment de la marée. Je me souviens qu'un matin [illegible] arrêté. En Avril 1858, le moulin a arrêté pendant quatre jours de deux heures trois quart à trois heures et un quart par marée.

J. B. Fortin 6. Le moulin doit être arrêté plusieurs heures en conséquence des changements de la rivière par le quai de 1852.

Ls. Auger 7. Il y a deux ans à la fin de Février, j'ai vu le moulin arrêter une journée entière et une nuit, c'était le vingt deux ou vingt trois de Février ou le vingt quatre, dans les basses mers, a une occasion que la rivière est devenue grosse.

A. Mathieu 8. Une fois il y a quatre ans (1855) vers la fin de Juin ou le commencement de Juillet a huit ou neuf heures du matin la mer était basse alors. L'eau descendait dans la rivière faisait un tour et remontait dans le canal de la roue du moulin. Le moulin à été arrêté une heure et demie à 2 heures pendant que j'ai été la, et on m'a dit qu'il était déjà arreté depuis deux heures.

J. Ferguson 9. The mill now stops from four to five and a quarter hours during spring tides. It also stops by the freshets of the river Beauport. Every freshet stops the mill. For these four years past it has been the same and must have been the same since the wharf was built in 1852. This year (1859) the wheel was immersed in water on the 18th March and was not clear till the 21st at between 11 and 12 A. M. Again on the 31st March mill stopped for nine hours owing to freshet.

Ed. Henderson 10. I have several times seen mill stopped by back water from freshet time since wharf of 1852 unconnected with tide water.

Frs. Nadeau 11. Vers la fin de Février ou le commencement de Mars 1858, durant un temps que les eaux étaient extremement grosses il paraissait vers Z entre X et Z une digue de glace qui faisait remonter l'eau au moulin. J'ai alors mesuré que la roue trempait trois pieds dans l'eau.

A. Scott 12. Wharf of 1852 causes back water on the mill wheel and appears to have been built for the express purpose of annoying the Proposed

EVIDENCE

Adduced by Defendant on the same subject.

G. Grenier 1. Je suis en mauvaise entente avec le Demandeur. Il y a des grandes mers que le moulin arrête cinq à six jours, c'est pareil à présent comme avant que le quai de 1852 fut bâti. Le moulin arrête pareil. La mer ne monte ni plus ni moins à present que dans le temps passé (*In his first evidence he says*) Je trouve que la mer monte beaucoup moins a present qu'il y a quinze ans passées.

SYNOPSIS

Of evidence in Appendix O

It is here asserted by twelve witnesses, contradicted by none, of the Defendant's witnesses, that since the erection of the wharf of 1852, the mill has been stopped by freshets and jams of ice in the spring, which it is asserted in Appendix N never occured previous to the construction of the said wharf

(Signed.) CHS. BAILLARGE'.
EW. STAVELEY.

APPENDIX P.

Miscellaneous extracts from evidence on different subjects.

F. Rocken 1. Lived with Defendant ten years as farmer. Defendant was in possession of beach of St. Lawrence and St. Charles rivers as he used to cut the grass there.

A. Barbeau 2 Defendant's witnesses Le Défendeur passe pour être propriétaire de la greve St. Charles jusqu'à la basse mer.

Capt. Lambly 3 Defendant's witnesses, Harbour Master Dont think any Gentleman can take possession below high water mark because it belonged to the King.

A. McDonald 4. Plaintiff's witness.

Consider salmon colour on Racey's plan to be the beach of river Beauport [illegible]

A. Parent [illegible] Defendant's witness.

Duchesnay avait la possession jusqu'à [illegible] basse mer.

O. Barbeau [illegible] Defendant's witness.

Je sais que le Défendeur possède jusqu'à la basse mer.

P. [illegible] 7

C'est dans l'été de 1853 que j'ai travaillé pour le Défendeur à mettre les vidanges de B à X. J'ai employé deux chevaux, et M [illegible] un, durant une partie de l'été dernier et de l'été précédent.

W. Murray [illegible] Defendant witness.

Defendant's ceased laying stones at circular line between B and X.

W. W. [illegible] Plaintiff's witness.

When I made the plan Plaintiff's exhibit X [illegible]. The survey was made on the seventh April.

P. K[illegible] 10 Plaintiff's witness.

I know that behind Defendant's wharf it used to be a swamp, but he has filled it in, (wharf of 1854).

L. Auger 11. Plaintiff's witness.

Nous nous sommes aperçus dès la première année que la première partie du quai du Défendeur, celle bâtie en 1854, nous gênait. Ça dés [illegible] moulin qui est de l'autre côté.

Extract from [illegible] 12 [illegible] Bossé [illegible] Grey vs. Brown

The old wharf of which I have spoken [illegible] been built in my time, was so built in 1832 to 1838. In my time the high tide [illegible] up in the garden.

G. Giroux 13 [illegible]

C'est avant que le quai du Demandeur [illegible] a lavé dans le jardin du Demandeur. Dans ce temps [illegible] à rien à la rivière. Avant le quai [illegible] Il pouvait y en avoir [illegible] Défendeur m'a dit [illegible] Les pelles qui avant l'arrivée des Experts [illegible] et Ferguson, Messieurs du Demandeur [illegible] bas du moulin. Avant [illegible] Vager, Ferguson [illegible] la chaussée, [illegible] avait l'effet de faire paraître aux Experts [illegible] en aurait eu sous cela. [illegible] et la rivière [illegible] pouces d'eau [illegible]. Vallée est venu Vendredi le 18 Mars [illegible] et demi de l'après midi, avec du blé pour faire moudre [illegible] sa farine le lendemain. Je n'ai pas entendu marcher le moulin [illegible] trop de bruit pour cela.

[illegible]

Say the same thing as No. 13 as to [illegible] throwing down ice, etc. Samedi le 19 Mars était un gros [illegible] Les [illegible] que le Demandeur avait fait faire dans la glace [illegible] de flotter.

F. M[illegible] Defendant's witness [illegible]

Say same as Nos. 13 and 14 as to [illegible] and throwing ice over [illegible], etc. [illegible] pas ce qu'ils allaient chercher. [illegible] plus d'eau. Les trous faits par le Demandeur dans [illegible] un peu de l'empêcher de flotter.

L. M[illegible] 16 Plaintiff witness.

The flood gates were opened on the 19th [illegible] the Monday following.

M. Mar[illegible] 17. Plaintiff's witness.

J'ai été [illegible] 18 Mars [illegible] pelles avaient été fermées ça aurait [illegible].

V. Contois 18 Mr. B[illegible] Plaintiff witness.

Quand on est arrivé au moulin [illegible] et ouvertes que quand on a retourné [illegible].

C. Bitner 19 Plaintiff witness.

Martin (No. 15) m'a demandé si c'était vraie que les pelles avaient été fermées avant l'arrivée des Experts et il a dit que le *Défendeur voulait lui faire dire cela.* Vers neuf à dix heures du matin il y avait deux pelles d'ouvertes les deux autres ne l'ont été que vers trois [illegible] quatre heures.

L. Angers 20 Plaintiff's audit

J'avais levé trois pelles le Vendredi soir et elles ont restées ouvertes jusqu'au Mardi suivant. Samedi dans l'après midi vers trois ou quatre heures j'ai sorti pour achever de lever une pelle parceque [illegible] Fergueson [illegible] pas avec moi. Je suis positif que Fergueson n'a pas [illegible] Samedi avant six heures du soir. Je sais que le blé de [illegible] Vendredi de bonne heure, dans l'après midi et après [illegible] six heures du Vendredi soir. Ca peut avoir pris [illegible] pour moudre la charge de Vallée.

(Signed.) { CHAS. BAILLARGE.
{ EDWD. STAVELEY.

APPENDIX Q.

Extracts from titles and exhibits [illegible] showing possessions and boundaries et partes.

Exhibit No. 1 du Défendeur

Défendant's exhibit No. 1, [illegible] 1783 to 1853, [illegible] par [illegible] et [illegible] Défendant's Exhibit No. 1 [illegible] Plaintiff's [illegible] 20 April, 1874

1. "La dite terre [illegible] Dame de Beauport [illegible] grant of two and a half [illegible] de la rivière de Notre [illegible]

2. Seigneurie de [illegible] nait au dit feu sieur de [illegible] appartenait [illegible] Richard Gilard vivant Seigneur de [illegible]

3. Et M. Du [illegible] de chasse aux dits habitants [illegible] de pêche et de [illegible] sur la grève [illegible]

Défendant's Exhibit No. 1 [illegible] Plaintiff's [illegible] 20 March 1876.

4. "Les trois [illegible] vendeurs, et ce [illegible] quel il est [illegible] ne fère et rebâtir [illegible] tout sont figurés [illegible] *B. [illegible] appartenant [illegible] de la rivière.*"

Défendant's Exhibit No. 1 [illegible] Plaintiff's [illegible] 11 May, 1792.

Contract [illegible] par Mr. [illegible] Dubois [illegible] MM. [illegible] Frazer, [illegible] de la Vallée, et Louis Gouin, [illegible] sous la [illegible] Vallée's [illegible] [illegible] to [illegible]

Rights given [illegible] Vallée's [illegible] par [illegible] et par [illegible]

Right given [illegible] Vallée's [illegible] par [illegible]

5. "Consistant [illegible] de la rivière de Beauport qui d'avera toujours les [illegible] par ces presentes le dits [illegible] tages, prerogatives et [illegible] Avec la 2e Mars 1785. Encore les deux [illegible] sous le tout, ce que [illegible] quelconque.

"Les dit meubles [illegible] et construire etc., *depuis l'an* 1785 [illegible] 2e [illegible] aujourd'hui, [illegible] des les [illegible] *[illegible] l'Hôtel* [illegible] 30 [illegible] en vertu des lois en force en cette [illegible] dépendance, ... de l'usage et droits de [illegible] et autres dépendances *des chaînes* [illegible] dépendances des dits moulins, [illegible] des pêcheurs. Doivent en outre les dits [illegible] à savoir à perpétuité, pour voir et *[illegible] Beauport* [illegible] *dit moulin les bâtiments* [illegible] *embarquements et débarquements, sans pouvoir en être empêchés.*" **"Les dits vendeurs se reservant de se reservir de la dite rivière comme ci-devant et autres droits seigneuriaux dans icelle." ***Déclarant les dits vendeurs qu'ils ne détourneront jamais l'eau de la dite rivière de son cours naturel, etc., etc.***

[illegible] changing the natural course of the water.

Se reservant les dits vendeurs la liberté de construire des moulins sur la dite rivière ou faire autres usages de la dite rivière [illegible] *[illegible] de leur liberté, de transport [illegible]*

Defendant's Exhibit 6 [illegible] at the instance of Ed. Henderson in Re [illegible] No 157. Circuit Court. Proof of several freshets showing the extent of a freshet in depth.

The river Beauport is a small river averaging [illegible] twelve feet in width. In or about July 1851 there came an extraordinary heavy [illegible] freshet and the river was much higher than I have ever known it to be. All the lands adjoining the river Beauport from my mill down to the road were more or less inundated. The waters passed over a part of the property of the Plaintiff (Marcoux). I have also knowledge that the said property *[illegible] 1851.* The ordinary depth of the river opposite my mill is about six or seven inches, and *[illegible] about seven or eight feet.* The river opposite to my mill is about twelve [illegible]. I should call five feet depth of water in the mill pond an extraordinary flood.

Defendant Exhibit 7 No 2 filed at Defendant's [illegible] 1854.

La cour, vu les diverses pièces de record, accorde a B. C. A. Gugy, etc., et declare le dit immeuble affecté et chargé envers le dit opposant Gugy [illegible] de faire et entretenir a perpetuité toutes les clôtures nécessaires, separant les domaines de Beauport du dit immeuble et qu'*icelles* clôtures seront *placées sur la [illegible] Beauport,* laquelle [illegible] d'après le dit acte doit diviser a toujours les dits heritages, et seront disposées de manière a ce que les animaux du dit opposant, etc., ne puissent etre empêchés, ni directement, ni indirectement, d'aller boire au bord de la rivière.

Defendant's exhibit No. 8 [illegible] April 1839.

En échange de l'emplacement de Grenier, Gugy lui donne "un emplacement d'à peu près même superficie *que cette partie de leur comp[illegible] par la marée.*

Defendant's [illegible] March 1854.

Whenever the bank of the river Beauport do not exceed four feet in height they are liable to be flooded during freshets.

Evidence of Ware in Re Marcoux vs Brown.

On one occasion I remember all the lower grounds at Beauport being flooded by a freshet.

Same exhibit 10, Continued G. Bisset [illegible]

After heavy rains or a thaw of snow in the spring *the natural bed of the river is insufficient* to carry off the great body of water, which generally comes down the river on such occasions. On one occasion though the sluice gates were up, the flat lands in the vicinity, were all flooded and the water passed off between the mill and the Plaintiff's property.

[illegible] inundation.

When the gates are down the water [illegible] flood the [illegible]. On one occasion when I had the mill the water continued to rise in the mill pond, though the gates were open. We opened the gates at 2 P. M. and the water continued to a late hour of the night after which they gradually subsided.

Same Exhibit 11. Edward [illegible]

At the time I went to the dam there was a foot of water on the road, between the [illegible] dam and the mill.

Plaintiff's Exhibit No 12 [illegible] 1852 [illegible] Gugy [illegible] to [illegible]

Whereas, B. C. A. Gugy, is about to construct a wharf in addition to or prolongation of a wharf now existing which extention said Gugy intends to build into the channel of river Beauport and upon the bed thereof so as to impede the passage of schooners and other vessels to and from the mill and to interfere with the working thereof. And whereas the said wharf is an encroachment on the channel of the said river as it always existed.

Plaintiff exhibit No 13. Title deed.

All reserves &c., to be complied with, as in Title of 1792 above mentioned [illegible] No. [illegible] of the Appendix.

Said purchasers shall submit and conform towards B. C. A. Gugy, Esquire, proprietor of the domain of the Seigniory of Beauport as being in the rights of the late Antoine Juchereau Duchesnay, his heirs and assigns, to all the servitudes, reserves, obligations and services, set forth in the deed of sale made by the late A. J. Duchesnay &c., to John Young, Simon Frazer and Thomas Grant, (Defendant's Exhibit No. 5, also No. 5 of the Appendix in 1792 and the said purchasers shall make and maintain for ever all fences on the south west side of the river Beauport, which (the river) is to divide for ever *[illegible] as not to prevent the cattle from going to drink in the [illegible].*

Plaintiff's declaration 14, exception 14, reports 30th Oct. 1852. That the river navigable

That the said river Beauport is a navigable river, and as such has until the grievance hereinafter complained of, been navigable from the said mills to the river St. Lawrence and hath been used and enjoyed by the said Plaintiff and his predecessors, in the floating of bateaux and other vessels employed by them in conveying grain, flour and other effects to and from the said mill

That the wharf in question traverses the river and affects the course of the waters That the river is destroyed for navigable purposes

That the wharf complained of, on or about the 16th of October 1852, *and in and upon the said river Beauport a certain wharf which nearly traverses the whole of the said river and which said wharf not* [illegible] *much*, that it is now quite impossible for the Plaintiff to float up bateaux and other vessels from the said river St. Lawrence to the said mill as heretofore and the said Defendant hath by means of the said wharf prevented the waters from running down the natural channel of the said river and *confines the channel to so small a breadth that in freshet time* the waters flow back upon the mill, &c.

Defendant's exception 15 to Plaintiff's declaration

That Plaintiff encroached long previous and Defendant had to build his wharf to protect his property

That the wharf complained of in the declaration is wholly erected on the Defendant's ground and does not traverse or project into the river, *and that the dike so erected by the said Defendant has been raised for the purpose of preventing the encroachment of the said river upon the land and the Defendant saith that long previous to the erection* of the said dike *by the said Defendant*, he, the said Plaintiff had erected a pier or wharf upon the opposite side of the said river, which said wharf extended a great distance into the said river and forced the waters and current to the Defendant's side, wherefore it became necessary for Defendant to erect said dyke for his own protection

Affidavit of Plaintiff filed 1st March 1854

16. That this deponent did not place any stones along the stone store and that it was not necessary for Defendant to build his wharf.

Defendant's affidavit

17. Mill used to stop four hours *per day* previous to the building of the wharf of 1852.

Report by Brown against Gugy, against his encroaching his wharf of 1851

18. Which wharf (that of 1851) said Gugy intends to build into the channel of the said river Beauport and upon the bed of the said river and whereas the said wharf is an encroachment upon the channel as the same has always existed and extends far beyond the bounds of the property of the said Gugy and is calculated seriously to injure the said Brown.

(Signed.) CHS. BAILLARGE'.
EDW. STAVELEY.

APPENDIX B.

Extracts from authors on river's.

Denizart tome 7, p. 360, clause 19

1. Défenses à toutes personnes de faire ou outres édifices ou empêchements nuisibles au cours de l'eau dans les fleuves ou rivières navigables, flottables et meme d'y jeter etc.

Clause 20.

Défense à toutes personnes de détourner l'eau des rivières navigables ou d'en affaiblir ou altérer le cours etc.

Clause 21

Il est du une indemnité au propriétaire ou fernier d'un moulin sur une rivière navigable ou flottable pour le temps que le moulin a été empêché de tourner.

Davezies cours d'eau p. 40

2. Comme accessoires des rivieres navigables les bras même non navigable qui en dépendent sont également compris dans la domaine public.

Page 40

Le compte d'argent demandait que l'on déclarat navigable les cours d'eau qui portent bateaux ou radeaux pendant un mois au moins dans le courant de l'année.

Page 45

Les rivière navigables, la mer et les grèves qu'elle couvre habituellement sont hors du commerce parcequ'on ne conçoit pas que leur consecration aux usages generaux puissent en aucun temps cesser

Page 46. Le terrain que les eaux couvrent sans débordement extraordinaire est regardé sous nul doute dit Lefebvre de la Planche comme faisant partie du lit de la rivière et comme tel au rang des choses publiques.

Page 47. Le fleuve pose par lui même les bornes de son lit. Il découpe et détournite ses rives lorsqu'il roule son volume habituelle le plus fort. *Ripa ea putatur esse quæ plenissimum flumen continet*, et la laisse des hautes eaux navigable indique le lieu où finit le domaine public et où commence la propriété des riverains. La cour de Lyon a posé la limite a la ligne des plus hautes eaux navigables.

Page 49. La restriction de la limite du fleuve aux eaux moyennes ne parait pas rationnelle. Car c'est pendant plusieurs mois de l'année substituer une démarcation purement idéale et démentir par le fait à celle que la nature elle même trace sur le terrain. La jurisprudence administrative est restée conforme aux lois Romaines et aux anciens principes du droit Français attesté par Lefebvre de la Planche.

Ordonnances maritimes de 1681. Rivières navigables jusqu'au grand flot de Mars.

(Signed.) CHS. BAILLARGE'.
EDW. STAVELEY.

ARBITRATION EXPENSES.

MR. BAILLARGE'S ACCOUNT.

One hundred and fifty-three days employed, since the 18th of April 1857 to the end of May 1859, being about 25½ months in being sworn in, surveying the premises, levelling, observing the tides, and stoppage of the mill at all seasons, preparing plans and sections, taking evidence, hearing the parties, reading and analysing the record, deliberating and preparing the report, at ten dollars ($10) per day	$1530 00
Chain bearers, clerk's time employed at plans, messages, &c., &c., 73 days.	73 00
Expenses including carriage hire for twenty-nine trips to Beauport, tolls, stationary, subpœnas, &c.	74 95½
In copy of report, 47,000 words at 10 cts.	47 00
In evidence taken by Experts, 20,900	20 90
Use of office and fire proof safe for two years, at $50	100 00
Amount due to Mr. Baillargé	$1845 85½

It may be necessary to remark that the charge made by the Experts is in reality equal to not much more than half the amount; since Mr. Baillargé for instance was employed to fifty-eight days out of the number of days above charged, from seven to nineteen hours per day, being an average of thirteen hours per day; these fifty-eight days are therefore to be equal to at least one hundred and twenty-six days of from ten A. M. to four P.M. Neither is it be forgotten that the case was one that presented peculiar difficulties, and that the charge it is, is no more than half of what Government allows Engineers for similar services.

MR. STAVELEY'S ACCOUNT.

Seventy-three days employed as mentioned in Mr. Baillargé's account, not including plans, sections and ——— of report, at $10	$730 00
Expenses, including carriage hire	53 00
	$783 00

REMARKS.

It will be remarked that the Defendant's Expert has not subscribed his name to this report, but has preferred to send in a separate one. Not that his views differ very materially from ours on most of the conclusions come to in answer to the several clauses of the judgment, but avowedly on account of our having, according to him, exceeded our duty by reporting upon the wharf of 1852 in relation to its action on the ice of the river during the spring freshets, and on account of our having in any way hinted at the former existence of a North East channel beyond the limits X Y mentioned in the judgment. Nor were we in any way called upon according to the Defendant's Experts to prepare the several appendices annexed to our report.—On all these points Mr. Wallace may be right but we think not.

The judgment called upon the Experts to examine and report upon the *natural and artificial obstructions* to the flow of the water

1° in efficiency of the outlet and its *particular causes*. Also whether a rise of the water is caused by the obstruction

The undersigned considered the natural and artificial obstructions to include those of every description whether of a permanent or merely of a temporary character. They considered the ice to be among the *particular causes* above alluded to and hope to be borne out by the Court in their [illegible]

After coming to the conclusion that no channel had existed in 1852, between X and Y, the Experts deemed it expedient in view of all the evidence on the subject to offer some explanation, as to where the supposed channel might have been, and as to the appendices and accompanying synopsis, we did not consider the mere fact of their presenting an appearance unconformable to the Defendant on most points, as sufficient reason for their exclusion from the report.

Rather let it be surmised whether Mr. Wallace's refusal to endorse our views is not in some way connected with his unwillingness to touch upon any point that might have forced upon him conclusions adverse to the Defendant's interests.

Signed. CHS. BAILLARGE'.
EDW. STAVELEY.

The 30th day of May, 1851

ADDITIONS TO EXPERT'S REPORT

To the Honorable Judges of the Superior Court.

At the end of the Report sent in by Mr. Wallace there appears a remark purport to be signed by Mr. Baillarge. The remark is to the effect that Mr. Baillarge concurs in Mr. Wallace's views, excepting in so far as they are modified by those contained in the report prepared by Messrs. Baillarge and Staveley and signed by them.

The three Experts may in reality be said to agree on most of the *minor points* at issue, and it is therefore Mr. Baillarge has made the remark signed by him at the end of Mr. Wallace's report, and some remarks of the same nature subscribed to by the undersigned at the end of their report to which the attention of the Honorable Judges is respectfully requested previous to reading the report itself. It will however be seen by our said report, that the point on which we have materially differed from Mr. Wallace is really the most important point of all. The subject of complaint, as set forth, in the Plaintiff's declaration, is what erected by the Defendant in 1852 and Messrs. Baillarge and Staveley by their report prove that what exists in reality an obstruction which should be removed.

That is the only material point on which the Experts disagree.

It will therefore be considered by the Honorable Judges that Mr. Baillarge's name at the foot of Mr. Wallace's report amounts to little or nothing with regard to his opinion on the only important point at issue.

It has just occurred to the undersigned that the blank date of their report has not been filled in previous to being sent, they therefore beg the Honorable Judges will consider the date of this communication as being that of the said report and hereby authorize the said date to be filled in accordingly.

We must also request that this communication be annexed to Our Report and considered forming a part thereof.

(Signed.) CHS. BAILLARGE.
EDW. STAVELEY.

Affidavit of Experts

MESSRS. BAILLARGE AND STAVELEY.

The undersigned Experts having taken cognizance of an affidavit by the Defendant in this case; and of two other affidavits one by Mr. Wallace the Defendant's Expert the other by Mr. Holwell a clerk in Mr. Wallace's office in each of which are to be found several untruths and reflections of a character injurious to the undersigned; think it their duty herein to state on oath that all such assertions as contained in those affidavits are false, malicious, unjust, and without foundation.

The Defendant in his affidavit continues the policy observed by him throughout this protracted suit—that of trying to distract attention from the wharf built by him in 1852 and so justly complained of in the declaration, to the consideration of the bank of stones behind the "stone store" the point of land between the channel and tail race and the tree at Point Y and other insignificant objects which the undersigned have declared in their report to bear no relative importance to the said wharf as regards the obstructed state of the river Beauport in freshet time and which assertion they now most emphatically repeat that there may be no doubt as to their having meant what in reality they said in their report.

The Defendant speaks of our partiality in favour of the Plaintiff, and how to refute that charge, we do not know. It occurs to us that when an Expert or even a Judge has arrived at a conclusion favourable to one of the parties in any suit and wishes to substantiate his [illegible] party, and unfavourable to his opponent, and the very fact and act of doing so must necessarily for the time being give him an air of partiality; but it does not follow that the conclusion first arrived at has been based on any partial consideration. We therefore openly disclaim and deny on our honour and on our oath that we have been influenced in our decisions in any [illegible] than by our own observations and a full and impartial consideration of the whole record.

Following these affidavits we will first dispose of that of Mr. Holwell and then successively consider that of Mr. Wallace, and that of the Defendant [illegible]

With regard to the first, it is barely necessary to remark that there is evidence enough on the record to render useless any further assertion as to the former existence of a North East [illegible]

Mr. Holwell [illegible] by thinking to serve his master, Mr. Wallace, has made an assertion as calumnious as it is malicious and untrue. He states that "it is also palpable and plain that in the line of section through point Y, the ground on "both sides is misrepresented in plan of MM. Baillargé and Stavely, and the tree is not "fairly shewn [illegible] made for Mr. Holwell that the [illegible] signed by Mr. Wallace [illegible]

We [illegible] Mr. Holwell means by the words "unfairly shewn" we are at a loss to conceive, unless it be that every branch and leaf of the tree are not exactly indicated to a proper scale [illegible] tion. In other respects we assert and must [illegible] as demonstrated by some one else than a mere *Surveyor's clerk*, [illegible] any particular bearing in any way on the case at issue. Mr. H[illegible] es in his affidavit that "he convinced himself that the tree at Point Y is a "natural one growing originally on the bank of land." Our report in no way denies this as [illegible] nk fit to incur any expense to ascertain so unimportant a particular; since, as [illegible] report, the fact of the wharf at Y encroaching or not on the present channel of [illegible] ore no relative importance to that of its encroachment on the whole space situated [illegible] en the present channel and that supposed to have formally existed towards the North East. We stated that the tree in question looked rather like one that had been planted there and can perceive no reason yet for modifying our opinion in that respect.

When a bank of land is overgrown with trees of the same species, it is evident that those at the foot of the bank cannot rear their heads as high as those growing on the top of the

bank; when as in this case we find quite the contrary to obtain; since the tree at Y growing as alleged from the lowermost part of the bank considerably overtops those to be found on the summit of the land.

Having now disposed of Mr. Holwell's unfounded assertions we proceed to offer a few remarks on Mr. Wallace's affidavit which also contains assertions akin to those of his clerk.

Mr. Wallace swears "that on every occasion on which the Plaintiff represented that the "mill was stopped by back water the Experts (unwillingly, including himself of course) as-"sumed the fact to be so without resorting to any expedient to ascertain whether the mill "might not have continued to work for any, or what length of time." Now the error of the above statement consits in the undeniable fact that Mr. Wallace can know nothing of the expedient resorted to by the undersigned to test whether the mill might have continued to go or not, since, on almost all such occasions Mr. Wallace was absent from the premises; the survey and observation of the rise and fall of the tide having been at Mr. Wallace's own suggestion, and with his consent almost entirely carried on by Messrs. Baillargé and Staveley. The undersigned must therefore strenuously repudiate the charge made by Mr. Wallace and hereby declare that they made all such experiments and resorted to all such expedient as they considered necessary to inform themselves fully as to the time and cause of stoppage of the mill wheel. Nor did the Experts observations in any way depend, nor were they in any way guided by the Plaintiff's representations as to the mill being stopped by back water, since they visited the premises at least as often on the Plaintiff's absence as when he was on the spot, and much oftener if they remember well. On all such occasions the Experts took care as mentioned in their report to see for themselves, and they did not allow the truth of any of the Plaintiff's assertions either verbal or as contained in his declaration to depends on aught, but their own personal observations; a course of action precisely similar having also been observed towards the Defendant. To give more colouring to the above citation from Mr. Wallace's affidavit he adds, "more particularly as the Defendant suspected that the lower end "of the canal might be closed by artificial means." Now what we could have had to do with the Defendant's suspicions when we were on the premises with the tail-race or canal before us and our eyes open we cannot conceive and do not think it worth our while to make any remark on such futile and childish assertions.

Mr. Wallace next alludes to an experiment which the Experts had decided on performing to ascertain the time of stoppage of the mill wheel and which they failed to perform because, as he will have it Mr. Staveley refused to sign a certain document prepared by the Plaintiff on which they were to hold themselves responsible for any damage that might have been consequent on the said experiment.

The undersigned are at a loss how to deal with such an enormous statement as the above; for it is barely possible that Mr. Wallace can already have forgotten that on the occasion in question the tide water did not even reach the wheel, a circumstance which of course put the experiment out of question, and was the only cause of it not being performed as agreed upon nor did the Plaintiff offer the least opposition to our performing the experiment when he understood the nature of it.

The Plaintiff at first thought that the Experts intended to work the wheel through back water until it stopped of itself, which he very naturally objected to on account of the danger of straining and breaking the wheel an accident which it might have required weeks to repair and which might have proved a source of great damage to the Plaintiff; but when he understood our intention to be that of working the wheel only until it should lag too much to grind efficiently he was perfectly agreeable that we should perform the experiment and then left the mill with orders to his miller to do anything the Experts required. Nothing was done however, on that occasion in the way of experimenting on the wheel since as above observed the tide water did not even reach it that evening. Had there been any absolute necessity for the aforesaid experiment it could certainly have been performed on a subsequent occasion, but we found that the required information could be obtained quite a different way, that is by observing the time the tide took to rise and fall again through a given height; and we obtained it accordinly.

The two following paragraphs in Mr. Wallace's affidavit as to Mr. Staveley having on one occasion gone out to the mill without his concurrence, and as to a sudden rush of ice and water on the nineteenth of March last are fully commented on in our report, and need no further remark.

Mr. Wallace finally swears that he did not consent to the marginal note made by Mr. Baillargé in the evidence of Gabriel Grenier. Had Mr. Wallace attentively read the report of the undersigned, he would have perceived that the marginal note in question is therein alluded to as having been inserted and signed by Mr. Baillargé alone and he would have been spared the trouble of referring to the subject in his affidavit. We have now to deal with the affidavit made by the Defendant himself, some of the assertions in which we are sorry to say are at varience with our conclusions as to the facts.

Categorically to take up, answer and refute all the statements contained in this voluminous affidavit of the Defendant, would be merely going over our report anew, since

most of the topics commented on are therein fully discussed. There are many assertions however which must not be passed over in silence, not on account of their intrinsic importance, but of the false colouring given to them by the Defendant.

According to the Defendants showing our report is calumnious and libellous; we have dealt unjustly and shewn partiality for the Plaintiff because forsooth we have been forced by common sense to arrive at certain conclusions more favorable to him than to his opposant.

Defendant "cannot refrain from expressing his surprise," "has remarked with surprise and pain;" "called our attention in the most earnest manner;" "expresses his profound regret;" "the most trivial alleged errors are characterized as "grave" "he will not conceal that this has excited his indignation and suspicions," "He cannot but wonder," "a most painful impression has been produced on his mind," "unwarrantable liberties has been taken with his character," "he has among other things to lament," and so on.

The calumny we are accussed of, must be retaliated on the accuser. The falsehood laid at our door, must rebound upon the donor. The Defendant's affected expressions of surprise, regret, and pain, his false indignation and suspicions and his feigned lament must give way to real sentiments of the same kind on our part.

We may appear to wax warm upon the subject: but where is the man who would not do so, when he felt as we do his honour and integrity at stake.

The first page and a half of the Defendant's affidavit are devoted to the tree at point Y. The Defendant here states that what the undersigned assert in their report as having been told them with regard to the planting of the tree since the building of the wharf is an "atrocious falsehood." We had no reason to suspect the veracity of our informants who avowed themselves ready to state the same on oath, but we had no power to take evidence on the subject, and if we had we should have refrained from using that power, since as our report goes, the matter is of no importance whatever notwithstanding the repeated attempts of the Defendant to force upon our notice, as a matter of great moment.

The Defendant next swears that as "Mr. Baillargé acknowledged to him both the site "of the Plaintiff's wharf and the bank on which the Defendant's wharf is erected were set "down on the plan filed by the three Experts, not by actual survey and examination after "the removal of the said wharves, but by mere supposition. He then adds that knowing the "premises he is enabled to swear and does swear, that in these particulars there is error, and "error which ought to be and could be corrected without much trouble or expense by any sur-"veyor of average ability not disposed to make unreasonable charges."

The above charge is in every particular untrue; that on the contrary every detail bearing in any way on the subject at issue was carefully surveyed and measured, and laid down with perfect accuracy on the plan in question.

The Defendant affects to wish that some other surveyor should be sent out to the premises to correct the error alleged to have been committed by us in our survey of the locality. Nothing could be more satisfactory to us than such a proceeding, as the Court would then be convinced by additional evidence of the exactitude of our survey. Our unreasonable charges are next hinted at by the Defendant who probably compared them with those made by his own Expert, Mr. Wallace, forgetting however that Mr. Wallace's $6 for legal days from 10 A. M. to 4 P. M. and less, is even greater in proportion than our $10 for days of which a great number kept us occupied from 5 and 6 in the morning to 9 and 10 at night watching the effects of the morning and evening tides and surveying the premises.

On the third page of his affidavit the Defendant complains, "with profound regret" that we should have called things by their right names and not make the bank of stones T. V. to be a larger obstacle than the wharf to the flow of the river Beauport. We presume that the Experts themselves, and not the parties were to be the Judges of the relative importance of the several obstacles complained of by the Defendant as affecting the flow of the river in freshet time; since it is admitted in our report that under ordinary circumstances, the wharf of 1852, is no obstacle to the mill and though repeatedly called to our attention by the Defendant, we could not come to the conclusion that the bank of stones was any obstruction.

As to the so called "charge" made by us against Gabriel Grenier the living in one of the Defendant's houses, which the Defendant swears to be untrue we will admit that our informants may possibly have been in error and that the interest which the Defendant has in the said house may be other than that of a proprietor; but to speak of the mistake if it is one, as of a grave error is merely an attempt to withdraw attention from the important points of the case to others of a most trivial nature.

The Court will not fail to perceive that contrary to what is alleged by the Defendant there is no desire to impeach Grenier's evidence but only to show that he might have been slightly interested in the evidence for the Defendant in regard to the trick which the Defendant wished to prove the Plaintiff guilty of, that is of causing the flood gates of the dam to be opened on the nineteenth day of march last to create a rush of ice and water on that occasion

and thereby lead the Experts to report favorably for the Plaintiff: a circumstance which the Experts have dwelt on at some length in their report.

The point of land between the tail race and channel of the river is next taken up by the Defendant in connection with some remarks in our report, as to the witness Morency.

The Defendant here regrets that the Experts should be so deficient in memory as to have forgotton to record in their report certain admissions which he pretends them to have made as to the stones at W. P. having the appearance of being arranged purposely by the Plaintiff to form an obstruction.

This is easy of apprehension. The parties would very naturally, try to draw us out, and obtain some expression of opinion from us in advance of our report. Of course we were called upon to see things just as they appeared in the interested eye of the party so pointing them out; but because we may have answered that we noticed the stones so pointed out to us, it cannot be construed therefrom that we admitted any particular arrangement of the stones in question.

Defendant says his indignation and suspicions were excited by the fact of our having one day after Mr. Wallace's departure requested Morency to indicate to us on the premises of the position of the dry stone wall he had spoken of in his testimony. To this it is simply requisite to answer that the undersigned were in want of certain information to enable them to discover the whereabouts of the wall in question. Mr. Wallace on the contrary had examined the said wall previous to leaving the premises, and had asserted in the Defendant's presence and hearing that it was perfectly visible to him though our perceptive faculties were too dull to find it out without the help of the guide, and with the guide's assistance were still unable to discover it.

Another error we committed, according to Defendant, is that of not having embodied in our report the fact of Ferguson living in one of the Plaintiff's houses, especially as we chose to make a similar assertion in regard to Grenier. This was altogether uncalled for, as in coming to a decision on the several points at issue, we in no way based any of them on Ferguson's testimoney, having left him out of consideration altogether on account of the possible interest which he might have felt from the fact that he not only lived in one of the Plaintiff's houses, but was also in the Plaintiff's employ, a circumstance entered as a marginal note in our extracts from his evidence.

The subject of the Defendant's protest against Mr. Stavely for one day visiting the mill in the absence of his brother Experts and the Defendant is fully discussed in our report, and we must here repeat, and do positively swear, that Mr. Wall[illegible] acquiesced in our opinion that we had an undoubted right either individually or collec[illegible] visit the premises and when we thought fit to inform ourselves on any particular.

The Experts had informed the parties on more than one occasion that they would be ready to visit the premises at the bidding of either of them whenever thereunto required for the purpose of having anything pointed out to them and of listening to any explanation. They did so and it happened sometimes that the Defendant was present in the absence of the Plaintiff; at others, that the Plaintiff was present in the absence of the Defendant, and generally that they were both absent.

It will be understood that when a freshet had to be witnessed the Experts required to be present on the very nick of time. Now on the occasion alluded to in the said protest the Plaintiff called in a hurry upon Mr. Baillargé to request the Experts to visit the mill immediately for the purpose of observing the effect of the ice on the freshet water then coming down the river. Mr. Baillargé could not possibly go just at that moment and suggested to Plaintiff that it would be as well for Mr. Stavely as Tier Expert and thereby supposed to be as possible less interested than the parties Experts to proceed alone to the premises and report his observations to MM. Wallace and Baillargé on a subsequent occasion. Here then is the whole mystery, and if the Defendant has no other straw to catch at to prove our partiality for the Plaintiff we do not anticipate that the Court will very severely reprimand us for a course of action which we deemed honest and consistant according to our views and legal. The Defendant on the above mentioned occasion may not have been apprised of Mr. Stavely's intended visit to the mill, but must not suppose that there could have been any desire to exclude him from a participation in the Experts' observations on that occasion more than on any other occasion. There was no occasion for the presence of the parties on the premises every time the Experts visited the locality and accordingly they kept away though repeatedly advised of our intended visits and adjournments. Under these circumstances the undersigned humbly submit that the fact of one of the parties not having been notified on one of the numerous occasions on which they visited the mill must rather be looked upon as an oversight than as an intentional act and dealt with accordingly, especially when it is considered that the Experts could see things through their own eyes without the necessity of having everything poked at them by the parties.

At pages eight and nine etc. of his affidavit Defendant swears that as a proof of our leaning or partiality in favor of the Plaintiff he would cite our criticisms of the testimony of H. N

Jones Esq., who as Defendant most solemnly declares is a perfect character well known as a man of unswerving rectitude &c. We certainly are fully disposed to admit all this, even without the "solemnity" of the assertion nor did we ever doubt the accuracy of the Portraiture; but what it has at all to do with the conclusions arrived at by us in our report we are at a loss to tell.

The court upon reading our report which after an affidavit of such a sweeping character as that now under consideration we must earnestly beg of the Court to do, will perceive that there is no such thing as a criticism of Mr. Jones' evidence that on the contrary it was only referred to and compared to with portions of Fergusson's evidence to explain the apparent anomaly of both the witnesses in their assertions of things on which they could have had but an opinion.

This subject is fully dealt with in our report in all its possible bearings and the Honorable Judges in perusing it will not be slow to perceive that the Defendant's affidavit has evidently been prepared with the view of making it appear that our report omits to explain many things which in reality will be found fully explained therein; but which might have been omitted without in any way affecting our conclusions.

The Defendant now regrets or affects to do so, that the Experts should not have found room in their voluminous report for some of Fergusson's assertions as the North East Channel. The undersigned humbly submit that on the contrary they have shown their impartiality by excluding that evidence from the appendices it being of little or no value when compared with most of the evidence on the subject.

This circumstance will indicate clearly that contrary to what the Defendant surmises, Fergusson's evidence had no weight with the Experts nor any influence in their decisions.

The Defendant continues to remark on the importance we may have attached to this and that evidence in coming to the conclusions arrived at in our report. We conceive it to be rather impossible for him as it would be for any one else, to say where we attached importance and where we did not; and that there may be no doubt of the correctness of our conclusions independantly of any influence which the evidence of Jones, Fergusson, Dunlevie, Grenier, Morency, and McKenna, &c. could have had in our decisions we will merely say; put all such evidence aside and our conclusions remain unaltered they being in no way founded on the assertions of those witnesses.

It is difficult says the Defendant to speak with patience of Mr. Baillargé who appears to have falsified the record by making a marginal note in the evidence of Gabriel Grenier &c. It has already been said that Mr. Baillargé made, and signed the marginal note in question as fully explained in the report; and if the Defendant finds it difficult to speak with patience of Mr. Baillargé for his remark in the margin unpalatable as it must necessarily be to the Defendant to have such an unpleasent truth promulgated; Mr. Baillargé feels much less patience when he recalls the unscrupulous manner in which the Defendant dictated to the clerk the words which from the subject of the marginal note in question and which Mr. Baillargé declares on his oath to have never been uttered by the witness.

The Defendant after causing the words "*je jure*" as ascribed to Grenier, to be entered in the evidence and remaining unchecked after the first attempt which Mr. Baillarge attributed to some inattention on his part immediately tried the experiment again but was made aware by the Experts that the trick had been perceived and would not be allowed repetition. We do not in our report accuse the Defendant as he falsely states of having smuggled similar expressions into the evidence taken in Court but merely surmise whether the "*je jure*" to be found in several sucessive paragraphs of some of the evidence adduced by the Defendant was not smuggled in by the process above alluded to.

We are next brought to task by the Defendant in the 13th page of his affidavit for saying we "considered" that he should have every possible chance of disproving the Plaintiff's charges as set forth in the declaration. It is well known that such citations as the above from any writen or verbal statement may appear to wear quite a different meaning when the words immediately preceeding and following are left out as seems to have been purposely done in this case. Let our report be attentively read and it will be seen that we have given the very best reasons for making the remark with which we are charged by the Defendant.

The interlocutory, it will be remembered, debarred us from the right of hearing any other evidence than that immediately and directly connected with the stoppage of the mill wheel. Now it was with the utmost circumspection and with the greatest difficulty that we could prevent the parties from going beyond the bounds allowed by the judgment.

We could not however altogether prevent it as fully explained in our report and as an excuse for the questions which we allowed the Defendant to put to the witnesses with regard to the stone behind the stone store and that at P we said as above accused of by the Defendant that we "considered" he should have every possible chance of disproving

all the Plaintiff's allegations. It is not too much to say in a word that all the accusations heaped upon us by the Defendant in his affidavit, instead of making us appear partial to the Plaintiff on the conclusions we have arrived at, are calculated as explained by us to produce quite a contrary impression on the Court.

The Defendant next goes on to say that as to the fact of the contraction and expansion of ice he dares to contradict the Experts and that contrary to our pompous and elaborate theory the ice between the Plaintiff's and Defendant's wharves does rise and fall with every tide. The Court however will observe that it is not at all from theory we have reported the ice to remain stationary during part of the winter between the two wharves but from actual observations, having on several occasions seen the floating ice at Z dipping gradually beneath the water to its connection with the fixed ice a little higher up.

Defendant proceeds to say that he has a personal knowledge of the presence of the Plaintiff in the house of Mr. Baillargé upon the day mentioned by Mr. Wallace in his second report. And so have the undersigned a personal knowledge of the presence of the Defendant in Mr. Baillargé's house on the very same, day and just about the time the Experts had met to sign the report and plans, &c.

The Plaintiff had visited Mr. Baillargé to make some enquiries respecting the time of giving in the report and the Defendant was apparently anxious in the same point. The fact is that both of them had some very natural curiosity to qualify and it is not their fault if they went away uninformed.

The next and last accusation made by the Defendant against the Experts is that of having made an alteration in the report after it was sent into the Court and published. The alteration alleged to have been performed is that of changing "30" to fifty and the fact of the marginal note being in Mr. Baillargé's hand writing is commented upon as a proof of the alteration. The Defendant also says he is convinced he once read 30. How he could have read 30 we do not know unless he read the report previous to its being sent in which case Mr. Wallace the Expert who had our report for a few days in his possession previous to our signing it must have allowed him to peruse it after it being well understood by the three Experts, that such a thing should not be done.

If any alteration from 30 to 50 has been made we here declare on our oath that it was so made previous to our signing the report and filing it at a time when we were still at liberty to alter as we throught fit. The fact of the marginal note being in Mr. Baillargé's hand writing amounts to nothing since there are several other corrections, and marginal notes in the same of writing to say nothing some of the last pages of the report which have been entirely written by Mr. Baillargé.

It occurs to the undersigned that the "50" had been inserted in figures and then erased to be replaced by the written word "fifty" as it was proper should by done.

(Signed.) CHS. BAILLARGE'.
EDW. STAVELEY.

Sworn before me, at Quebec,
the 3rd day of October, 1859.
(Signed.) J. B. R. DUFRESNE.
Com. S. C.

CONCESSION DE VENTE,

14 Mai, 1792.

Furent présents Antoine Jucherean Duchesnay, écuier, Seigneur de Beauport, Saint Roch et autres lieux, demeurant en son manoir Seigneurial à Beauport, et Dame Catherine Dupré, son épouse, du dit Sieur son mari dûment autorisée pour l'effet des présentes, lesquels ont par ces présentes concédé en roture à titre de cens et rente seigneuriale foncier perpetuelle et non rachetable et promettent faire jouir au dit titre dès maintenant et à toujours et vendu, cède, quitté, délaissé et abandonné dès maintenant et à toujours avec garantie solidaire entre eux sous les renonciations requises et de droit de tous troubles, dons, douaires

dettes, hypothèques, évictions, aliénations, substitutions et tous autres empêchemens généralement quelconques à Messieurs John Young, Simon Fraser, Junior, et Thomas Grant, écuier, tous trois résidents en cette ville de Québec, acquéreurs conjointement et à titre de société entr eux et pour eux, leurs hoirs et ayants cause respectifs à l'avenir, ce acceptants et à ce présents les dits Sieurs John Young et Thomas Grant, tant pour eux que pour le dit Sieur Simon Fraser, Junior, absent de cette province, auquel les dits Sieurs John Young et Thomas Grant promettent et s'obligent solidairement faire accepter, agréer et ratifier ces présentes par acte en bonne et due forme aussitôt qu'il sera arrivé en cette province, s'il arrive cette année, sinon dans le cours d'un an, date de ce jour sans que néanmoins le défaut de ratification dans aucun des termes ci-dessus fixés puissent en aucune manière invalider ni empêcher l'exécution des dites présentes. C'est a savoir les deux tiers du total du terrain situé paroisse et Seigneurie de Beauport, en la censive d'icelle, consistant en ce qui se trouve depuis la rive sud-ouest de la rivière de Beauport qui divisera à toujours les dits sieur et Dame Duchesnay et les dits Sieurs preneurs et acquéreurs et leurs représentants respectifs à l'avenir, de la en montant jusques à la chaussée (icelle comprise comme il sera dit cy après) du moulin qui tourne par la dite rivière de Beauport, construit sur le bord d'icelle et cy après vendu, lequel terrain en total est borné au sud-ouest partie aux dits sieurs preneurs et acquéreurs comme ayant acquis de Thomas Rocheleau dit Lespérance et François Parent, par acte passé devant Mr. Duchesneaux, l'un des notaires soussignés, qui en a gardé minute, et son confrere, le vingt-deuxième mars dernier, et partir au reste de la terre des dits Thomas Rocheleau et François Parent, ce que dessus vendu formant deux tiers du terrain que le dit Sieur Duchereau Duchesnay et Peter Stewart, écuier, aussi vendeur cy apres nommé, ont acquis en société des dits Thomas Rocheleau et François Parent par acte portant encore autres conventions, passé devant Maître Panet, qui en a gardé minute, et son confrère notaire, le vingt-neuf mars mil sept cent quatre-vingt-cinq, suivant le plan y annexé et approuvé des parties, et pour plus grande sûreté les dits Sieur et Dame Duchesnay mettent et subrogent par ces présentes les dits sieurs preneurs et acquéreurs en leurs lieu et place, en tous les droits, avantage, prérogative et autres prétentions acquises par le dit acte au dit Sieur Duchesnay, ses hoirs et ayants cause, à l'avenir et à perpétuité, et même comme si le dit acte eut été passé et les conditions y détaillés eussent été convenus entre les dits Sieur Thomas Rocheleau et François Parent et les dits Sieur acquéreurs auxquels est fait par ces présentes transport et délégation entière des dits droits et prétentions acquis par le dit acte avec toutes les charges et obligations et dommages dont les dits Sieurs Duchesnay et Stuart sont chargés envers les dits Rocheleau et Parent et par le dit acte sans aucune restriction ni exception à cet égard, vendent en outre les dits Sieur et Dame Duchesnay les deux tiers de la chaussée dans l'état où elle est actuellement, et qui traverse la dite rivière de Beaupert, avec pouvoir aux dits sieurs acquéreurs de reconstruire icelle de la manière qu'ils le trouveront à propos. Pourvu toutefois que l'eau de la dite chaussée reconstruite ne couvre ou n'inonde pas plus de terrain du dit Sieur Duchesnay que ci-devant, et pourront les dits Sieurs acquéreurs, leurs hoirs et ayant cause a l'avenir élever ou exhausser la dite chaussée en indemnisant le dit Sieur Duchesnay ou ses représentants pour les dommages que pourra occasionner l'inondation provenant de la surélévation ou exhaussement de la dite chaussée au terrain du dit Sieur Duchesnay. *Item les deux tiers* du moulin *à farine construit* sur le terrain ci dessus désigné tournant a quatre moulanges, ses tournants mouvements et autres dépendences annexées ou mobilière d'icelui, encore les deux tiers des quais, hangard, etables et autres bâtiments construits sur le dit terrain sans de tout ce que dessus concédé et vendu, rien reserver ni excepter en facon quelconque. *Item les deux tiers du moulin à scie construit* sur la dite rivière de Beauport, dalles et autres dépendences quelconque d'icelui, tel que les deux tiers du dit terrain ci-dessus concédé et vendu et des dits moulin à farine, *moulin à scie*, leurs dépendences telle qu'elles sont actuellement, quais, hangard, étable *leurs dépendences sus vendus* appartiennent au dit sieur Duchesnay, savoir le terrain pour l'avoir acquis conjointment avec le dit Sieur Peter Stuart des dits Thomas Rocheleau et *François Parent par l'acte sus daté et les dits moulin à farine et à scie*, hangard, quaies pour les avoir fait rétablir et construire conjointment avec le dit sieur Peter Stuart depuis l'année mil sept cent quatre-vingt-cinq.

Cette présente concession ainsi faite à la charge par les dits Sieurs preneurs leurs hoirs et ayants cause a l'avenir et à perpétuité de payer le onze Nov. de chaque année a commencer le onze Nov. prochain et ainsi continuer d'année en année à perpétuité au dit Sr. J. Duchesnay, écuyer, ses hoirs et ayants cause à l'avenir, seigneur de la partie de la seigneurie de Beauport appartenant actuellement au dit Sr. Duchesnay, au manoir principal de la dite seigneurie de Beauport, de laquelle le terrain sus vendu relève, un sol de cens et trente sols, argent tournois, de rente foncière perpétuelle seigneuriale et non rachetable, le dit cens portant lots et ventes, défaut, saisie et amende, suivant la coutume de ce pays. Se réserve le dit Sr. Duchesnay, pour lui, ses hoirs et ayants cause, pour la partie de la seigneurie de Beauport, qui lui appartient actuellement, le droit à perpetuité de rentrer par retrait conventionnel simple et sans être tenu à aucune formalité de rigueur dans la propriété des dits deux tiers, au total des dits terrains de la chaussée, du droit de l'eau, des moulins a farine *et à scie*, des hangars, quais et toutes leurs dépendences, à chaque mutation par vente ou autre acte ou contrat équipolent à rente de tout ou de chaque partie, des dits deux tiers en remboursement par le dit Sr. Duchesnay, ou ses hoirs et ayants cause, à l'acquéreur le prix principal, les frais et loyaux contes de son acquisition dans le délai de qua

rante jours entiers et consécutifs, à compter du jour que le contrat de vente ou autre contrat ou acte aquipolent à vente aura été signifié par écrit ou laissé en communication avec offres des droits de lots et ventes, se réservant en outre le dit sieur Duchesnay pour lui, ses dits hoirs et ayant cause, tous autres droits seigneuriaux qu'il peut avoir et prétendre sur ce que dessus vendu en vertu des lois en cette province comme seigneur du lieu.

Cette présente vente faite en outre pour et moyennant le prix et somme de deux mille livres cours d'Halifax égale à quarante huit mille livres de vingt sols dont mille livres cours d'Halifax pour le tiers que mon dit Sieur Duchesnay a obtenu du dit Sieur Peter Stuart pour son droit de moulin, rivière, et l'ancienne chaussée et les autres mille livres pour le surplus de ce que ci dessus vendu, la quelle dite somme de deux mille livres, les dits Sieur John Young et Thomas Grant promettent et s'oblige solidairement entre eux et pour le dit Sieur Simon Fraser, junior, payer et bailler aux dits Sieur et Dame Duchesnay ou ordre savoir. Cinq cents Livres cours d'Halifax d'hui en un an ou pour toute prefixion et delai à cette égarre et les quinze cents Lvres cours d'Halifax restant d'hui en cinq ans pour toute préfixion et délai avec les intérêts, de la dite somme totale de deux mille livres cours d'Halifax à six pour cent actuel légal des intérêts en cette Province à compter de ce jour jusques a parfait payment, lesquel intérêts seront payable de six mois en six mois au dit Sieur Duchesnay, ou ordre dont le premier payment echerra et se fera le sept Novembre prochain et ainsi continuer de six mois en six jusques a partait payement, et les dits intérêts déminuront suivant en proportion des payments faits sur la dite somme Capitale.

Item les dits Sieur Antoine Juchereau Duchesnay, Ecuier, et la dite Dame son épouse du dit Sieur son mari autorisée comme dit est ont par ces même présentes, concédé à titre de cens et rentes seigneurial foncière, perpétuelle et non rachetable promettent sous la dite solidité faire jouir au dit titre et ont vendu, cédé, quitté, délaissé et abandonnés des maintenant et a toujours avec promesse de garantir sous la dite solidité de tous troubles quelconques aux dit Sieur Simon Fraser, junior, John Young et Thomas Grant preneurs et acquéreurs conjointement et en société entre eux et pour eux leurs hoirs, et ayant cause à l'avenir ce, acceptant, comme ci dessus, les dits Sieur John Young et Thomas Grant a ce présents, c'est à savoir un terrain c'y après désigne situé en la censive de la dite Seigneurie de Beauport à prendre et borne par devant au sud à la cloture existant actuellement d'un petit clos ou parc destiner a mettre pacajer de petit animaux, par derriere par l'eau elevée de la dite chaussée allant le long de l'eau de la dite chaussée, vers le nord est à un piquet que les dites parties ont planté elles-memes d'accord d'un coté au sud ouest à l'aile nord de la dite chaussée allant vers le nord le long de la cloture du parc ci dessus mentionné jusques à un rocher ou cailloux qui servira de borne. Le dit cailloux placé vis-à-vis un pomier à pomettes et à environ cent cinquante huit pieds de la dite chaussée duquel rocher ou cailloux sera tiré une ligne droite au piquet ci dessus mentionné qui se trouve à environ cent cinquante pieds de la dite chaussée ainsi que le dit terrain est ci dessus décrit et désigné après que les dits parties l'ont limité elles-mêmes sur les lieux. Deplus les dits sieur acquéreurs leurs hoirs et ayant cause a l'avenir pourront passer ou faire passer librement à pied ou en voiture le long de la dite chaussée sur le bord du petit clos ou parc du dit Sieur Duchesnay depuis le chemin du Roy jusques au terrain ci dessus vendu a la charge par les dits Sieurs acquéreurs et leur représentant de faire faire et entretenir à toujours à leurs frais et dépens toutes les clotures nécessaires et solide pour entourer le dit terrain ci dessus vendu, sans que le dit sieur Duchesnay ou ces représentants à l'avenir puisse être tenus en aucune manière à faire ou a faire faire aucune partie des dites clotures sous quelques pretexte que ce puisse être et ne pourront les dits Sieurs acquéreurs clore ou faire clore le dit chemin ou passage ci dessus mentionné de manière à faire empêcher, directement ou indirectement les animaux qui seront dans le petit parc ou pacage qui appartienne au dit Sieur Duchesnay et qui dans la partie du sud ouest est entre le chemin du Roy et le terrain ci dessus vendus d'aller boire au bord de la dite rivière ou chaussée cèdent et abandonne en outre les dits Sieurs et Dame Duchesnay aux dits Sieurs acquéreurs le libre usage et jouissance qu'ils auront, tant que le dit moulin à scie existera ou tout autre moulin à scie le remplacent e construit au même endroit d'un autre terrain, " situé susdite seigneurie de Beau " port borné par devant au nord au chemin du Roy, par derrière au sud par une ligne droite " qui sera tiré de l'angle que fait la cloture du dit Sieur Duchesnay d'un côté au sud ouest " a la rivière Beauport et de l'autre côté au nord est par la cloture qui subsiste actuellement " entre le terrain vendus par ces présentes et celui restant au dit Sieur Duchesnay, ainsi que " le dit terrain est actuellement a la charge par les dits Sieurs acquéreurs et leurs représentants " a l'avenir de faire et entretenir à toujours à leurs frais et depenstoute cloture bonne et " solide nécessaires pour entourer le dit terrain en toute ses parties, sans que le dit sieur " Duchesnay ni ses représentants à l'avenir puissent jamais en aucune manière et être tenus de " faire ou entretenir aucune partie des dits clotures sous quelque pretexte que ce puis- " sent être.

Cette présente concession du terrain concédé, vendu et désigné en la septième page du present acte a la charge par les dits Sieurs preneurs et acquéreurs, leurs dits hoirs et ayant cause à l'avenir et a perpetuité de payer le onze Novembre prochain, et ainsi continuer d'annee en année à perpétuité a dit Sieur Juchereau Duchesnay, écuier, ses hoirs et ayants cause à l'avenir, Seigneur de la partie de la Seigneurie de Beauport, appartenant actuellement au du

Sieur Duchesnay au manoir principal de la dite seigneurie dont relève la dite partie de terrain ci-dessus concédé et vendu au sol de cens argent tournoirs pour la dite partie de terrain, le dit cens portant lots et ventes défaut saisine, et amendé suivant la coutume de ce pays, se réserve pareillement le dit Sieur Duchesnay, pour lui ses hoirs et ayants cause, pour la partie de la Seigneurie de Beauport, qui lui appartient actuellement le droit à perpétuité de rentrer par retrait, conventionel simple et sans être tenu à aucune formalité et rigueur dans la propriété de la dite partie de terrain susvendues, et de leurs dépendances à chaque mutation par vente ou autre acte ou contrat équipolent a vente du tout ou de chaque partie de sa dite partie de terrain en remboursant par le dit sieur Duchesnay, ses hoirs et ayants cause à l'acquéreur le prix principal les frais et loyaux cens de son acquisition dans le délai de quarante jours entiers et consécutifs, à compter du jour que le contrat de vente ou autre acte ou contrat équipolent à vente aura été signifié par écrit ou laissé en communication avec offres de lots et ventes, se réservent en outre le dit Sieur Duchesnay pour lui, ses dits hoirs et ayant cause, tous autres droits qu'il peut avoir et prétendre sur la dite partie de terrain susvendue en vertu des loix en force en cette province, cette vente faite en outre pour et moyennant le prix et somme de vingt livres cours d'Halifax, laquelle somme les dits Sieurs et Dame Duchesnay reconnaissent avoir reçu à leur satisfaction des dits Sieurs acquéreurs dont quittance à cet égard, et à l'instant est comparu en personne Peter Stuart, écuyer, l'un des juges à paix de Sa Majesté pour le district de Québec, résident en cette ville, rue St. Pierre, lequel a par ces présente vendu, cédé, quitté, délaissé, et abandonné et transporte dès maintenant et à toujours, et promets garantir de tous troubles dons domaires dettes hypothèques, evictions éliénations, substitution et tous autre empêchement généralement quelconque aux dits Simon Fraser, junior, John Young et Thomas Grant, acquéreurs conjointement et en société, entre eux et pour eux leurs hoirs et ayant cause respectifs à l'avenir, ce acceptants comme dit est et ace présent les dits sieurs John Young et Thomas Grant tant pour eux que pour le dit Sieur Simon Fraser, junior, absent de cette province, auquel les dits Sieurs John Young et Thomas Grant promettent et s'obligent solidairement faire accepter, agréer et ratifier ces présentes par acte en bonne et due forme aussitôt qu'il sera de retour en cette province, s'il arrive cette année, sinon dans le cours d'année de ce jour sans que néanmoins le défaut de ratification dans aucun des termes ci-dessus fixés puisse en aucune manière invalider ni empêcher l'exécution des dites présentes. C'est à savoir, un tiers formant avec les deux tiers ci-dessus vendus par le dit Sieur Duchesnay et Dame son épouse le total du terrain situé susdite paroisse et en la censive de la dite Seigneurie de Beauport, consistant le dit total ce qui se trouve depuis la rive sud d'ouest de la rivière de Beauport qui divisera à toujours les dits Sieurs acquéreurs d'avec le dit Sieur Duchesnay, et leurs hoirs et ayant cause respectifs à l'avenir, de là en montant jusques à la chaussée (celle comprise comme sera dit cy après), du moulin destiné à tourné par la dite rivière de Beauport construit sur le bord d'icelle et dont l'autre tiers va être cy après vendu, lequel terrain en total est borné du sud d'ouest partie aux dits acquéreurs comme ayant acquis de Thomas Rocheleau et François Parent par acte passé devant M. Duchesneaux l'un des Notaires soussignées qui en a gardé minute le vingt deux Mars dernier et partie au reste de la terre des dits Thomas Rocheleau et François Parent ce que dessus vendu forment un tiers du terrain que les dits Sieurs Jucheraau Duchesnay et Peter Stuart écuiers ont acquis en société des dits Thomas Rocheleau et François Parent, par acte portant encore autres conventions concernent le dit terrain. Passé devant M. Panet qui en a gardé minute et son confrère Notaires le vingt neuf Mars, mil sept cent quatre vingt cinq et suivant le plan annexé au dit acte et approuvé des parties y nommées et pour plus grand éclaircissement et sureté, le dit Sieur Peter Stuart met et subroge les dits Sieurs acquereurs en son lieu et place dans tous les droits, avantages et prérogatives es autres prétentions acquises par le dit acte avec les dits Thomas Rocheleau et François Parent à lui dit Peter Stuart et ses dits hoirs et ayant cause à l'avenir et à perpetuité, de même et comme si le dit acte eut été passé et les conditions y detaillés eussent été convenus avec les dits Thomas Rocheleau et François Parent et les dits sieurs acquereurs auxquel est faits par ces présentes transport et delégations entières des droits et prétentions acquis par le dit acte avec toutes les charges, obligations et dommages dont les dits Sieurs Duchesnay et Stuart sont chargés envers les dits Rocheleau et Parent sans aucune restriction ni exception a cet égare. Vend en outre le dit Sieur Peter Stuart aux dits Sieurs acquereurs le tiers de la chausée (dans l'état t'elle quelle est actuellement) et qui traverse la dite rivière de Beauport, avec pouvoir aux dits Sieurs acquereurs et leur représentants à l'avenir et à perpetuité de reconstruire icelle. *Item* vend et abandonne le tiers du moulin à farine construit sur le terrain ci-dessus designé et vendu, tournant à quatre moulanges de ses tournants virant, mouvements et de toutes les dependences annexes mobiliaires d'icelui, encore le tiers des quais, hangards, étables et toutes autres bâtiments construit sur le dit terrain susvendu sans du tout ce que dessus vendu rien reservez ni excepter en façon quelconque. *Item* le tiers du moulin *a scie construit* sur la dite riviere de Beauport dalles et autres dépendences quelconques d'icelui, enfin le tiers de l'usage et droit de l'eau pour les dits moulins à farine et à scie et le tiers au total des chemins particuliers par terre et par eau et de toutes les commodités et dépendences des dits moulins tel et ainsi que le tiers du dit terrain, des moulins à farine et à scie, leur dépendences de la chaussée de l'usage et droit de l'eau pour les dits moulins, quais et hangar, et autres dépendences, des chemins particuliers par terre et par

eau et de toutes les commodités et dépendences des dits moulins sont actuellement et appertiennent au dit sieur Peter Stuart, savoir le tiers du dit terrain pour l'avoir acquis conjointement avec le dit Sieur Duchesnay Ecuier des dits Thomas Rocheleau et François Parent par l'acte sus mentionné du vingt neuf Mars mil sept cent quatre vingt cinq (1785) et le tiers dans la dite chaussée des dits moulins a farine et a scie des quais, hangar et autres bâtiments de l'usage et droit de l'eau pour les dits moulin, dans les chemins particulier par terre et par eau et de toutes les commodités et dépendences des dits moulins tant par l'acquisitions qu'il a fait au dit Sieur Duchesnay suivant leur acte et conventions généralles au derniere acticle d'icelui passé devant M. Panet Notaire qui en a gardé minute le vingt sept Janvier mil sept cent quatre vingt cinq que comme ayant fait construire les dits moulins a farine et a scie quai, hangar, parti de la dite chaussée et autres batiments a frais communs avec le dit Sieur Duchesnay depuis les dits deux actes ci-dessus dattés et mentionné. A été convenu que l'article second du dit acte au dit jour, vingt sept Janvier mil sept cent quatre-vingt-cinq, par lequel il est convenu que le dit moulin à construire alors et construit depuis, sera banal et annexée à la partie de Seigneurie de Beauport appartenant actuellement au dit Sieur Duchesnay que tout le contenu du dit article second devient de ce jour, et à toujours nul à l'égard des dits Sieurs acquereurs, leurs hoirs et ayant cause a l'avenir et a perpétuité qui n'auront aucun droit directe ni indirecte de banalité pour le dit moulin à farine comme sera plus au long convenu et déclaré cy après abandonnant en outre le dit Sieur Peter Stuart aux dits Sieur acquereurs, leurs hoirs et ayant cause l'avenir et à perpétuité tout ce qu'il peut avoir acquis des dits Thomas Rocheleau et François Parent, de ses dernier, en conséquence de l'article troisième du dit acte au vingt sept Janvier mil sept cent quatre-vingt cinq, sans que néanmoins le dit Sieur Peter Stuart, soit ou puisse être tenu a jamais de fournir ou d'acheter les dix pieds de terrain outre le bas fonds que l'eau de la chaussée inondera ordinairement du côté du sud ouest de la dite rivière de Beauport ainsi qu'il est porté au dit articles troisieme infine du dit acte. Cette présente vente ainsi faite à la charge par les dits Sieurs acquéreurs, leurs hoirs et ayant cause de ce jour et à perpétuité de payer par chacun ou au dit Sieur Duchesnay comme Seigneur de Beauport dont relever le dit terrain sus-vendu ou a ses hoirs et ayants cause à perpétuité un sol de cens argent, argent tournois, le dit cens portant lots et ventes, défaut saisine et amende suivant les lois en force dans ce pays, et trente sols aussi argent tournois de vente Seigneurialle, annuelle fonciere perpétuelle et non rachetable, payable le huit septembre de chacune année, et a perpétuité, seront pareillement les dits sieurs acquéreurs leurs dits hoirs et ayants cause à perpétuite sujets et soumis envers le dit Sieur Duchesnay ses dits hoirs et ayant cause à perpétuité au droit de retrait conventionel en cas de vente en tout ou partie de ce que dessus vendu et ce dans les termes dans lequel le dit retrait à été convenu entre les dits Sieurs Duchesnay et Stuart par le dernier article de leur dit acte du vingt sept Janvier mil sept cent quatre-vingt cinq autant quelles ne sont point annullees ou qu'il n'y est point derogé par ces présentes, en outre aux autres clauses, généralles entre les dits Sieurs Duchesnay et Stuart et les dits sieurs acquéreurs cy-après detaillé. Cette vente faite par le Sieur Peter Stuart pour et moyennant le prix et somme de mille livres cours d'Halifax que les sieurs John Young et Thomas Grant solidairement entre eux et solidairement avec le dit Sieur Simon Fraser, Junior, sans division et sous les renonciation requises et de droit promettent et s'obligent payer et bailler au dit Sieur Peter Stuart d'hui en six ans, pour toute préfixion et délai avec intérêt d'icelle somme totale a six pour cent tau actuel des intérets en cette Province à compter de ce jour jusques au parfait payement les dits interets payables à l'expiration de chacune année.

Pour sûreté du payement de la dite somme de deux mille livres cours d'Halifax due au dit Sieur Duchesnay, écuyer, par le présent acte, et celle de mille livres cours d'Halifax due au dit Sieur Peter Stuart par le présent acte et des intérêts qui en previendront jusques au parfait payement, comme aussi pour la sûreté de l'exécution des charges, clauses et condition, tant ci devant que cy après mentionnes tout ce que dessus vendu sans en rien réserver, ni excepter en façon quelconque, demeureront de ce jour affectés, obligés et hypothéqués par privilége en faveur des dits Sieurs Jucherean Duchesnay et Peter Stuart comme bailleurs de fond chacun en droit soi, comme aussi les additions et améliorations qui y seront faites et construites à l'avenir et par ces mêmes présentes les dits Sieurs acquéreurs y ont volontairement affectés, obligé et hypothéqué le terrain qu'ils ont acquis des dits Thomas Rocheleau et François Parent, ainsi qu'il est designé en l'acte de vente du vingt-deux mars dernier, encore les amelorations qui y seront faites et construites à l'avenir, enfin tous leurs autres biens meubles et immeubles présents et à avenir sans aucun réserve ni excepter en façon quelconque.

Et a été de plus convenu entre les dits Sieurs Jucherean Duchesnay et Dame son épouse et Peter Stuart et les dits Sieurs John Young et Thomas Grant faisant tant pour eux que pour le dit Sieur Simon Fraser, junior, des articles suivants:

Premièrement.—Les dits Sieurs acquéreurs ni leurs hoirs ou ayant cause à l'avenir et à perpétuité ne pourront moudre, faire moudre, ou souffrir moudre sciemment au dit moulin sus vendu aucun bled ou tels autres grains des habitants et familles de la dite Seigneurie de Beauport que les dits habitants sont tenus de faire moudre au moulin banal de la dite Seigneurie selon les loix de cette province à peine de tous dépens dommages et intérests

contre les dits Sieurs acquéreurs, leurs hoirs ou ayant cause à l'avenir étant clairement convenu entre les dites parties que la bannalite pour le dit moulin convenu entre les Sieurs Duchesnay et Stuart, article second de leur acte du vingt-sept Janvier mil sept cent quatre-vingt-cinq est de ce jour absolument tombée et devenu éteinte, nulle et sans effets par ces présentes.

Secondement.—Les dits Sieurs et Dame Duchesnay donnent et accordent par ces présentes aux dits Sieurs acquéreurs, leurs dits hoirs ou ayant cause à l'avenir la pleine liberté de se servir du canal qui est fait sur la domaine du dit Sieur Duchesnay et qui conduit à la dite rivière Beauport, ainsi que du quai qui est sur le bord du dit canal pour tout usages de transport et débarquement quelconque à la charge par les dits Sieurs acquéreurs d'entretenir les dits quais et canal de toutes réparations quelconque excepté les dommages causés par telle personne qui les auront causés en allant ou se servant des dits quais et canal par la permission et consentment du dit Sieur Duchesnay et ses représentants pour autre usage que pour le dit Sieur Duchesnay et ses représentants, pourront même les dits acquéreurs leurs dits hoirs ou ayant cause faire elargir le dit canal comme ils le jugeront a propos, à la charge par les dits Sieurs acquéreurs, leurs dits hoirs et ayant cause d'entretenir à leur seuls frais et depens les dits quais et canal de toutes réparations quelconques et de retenir les terres et les eaux de manière a éviter les dommages que le dit canal pourrait causer au terrain du dit Sieur Duchesnay et réparer les dommages qui pourraient être causés par l'élargissement du dit canal et sans préjudicier au chemin des habitants qui conduit à la grève, bien entendu que la présente liberté donnée aux dits Sieurs acquéreurs pour eux leurs hoirs et ayant cause à l'avenir de se servir du dit canal et quais pour leurs transport, embarquement et débarquement ne s'étend aucunement à la propriété réelle et droits usages des dits canal et quai que les dits Sieurs et dame Duchesnay se réservent absolument par ces présentes.

Troisièmement.—Des dits Sr. et Dame Duchesnay pour eux leurs hoirs et ayant cause à l'avenir a perpétuité donnent par ces présentes pouvoir et liberté aux dits Sieurs acquéreurs leurs hoirs et ayant cause a l'avenir et a perpétuité de faire entrer dans la dite rivière de Beauport jusques au dit moulin *les bâtiments ou autres voitures d'eau ou cajeux ou les faire sortir de pour leurs transport embarquement et débarquement sans pouvoir en être empêché le dits* Sieurs et Dame Duchesnay pour eux leurs dits hoirs et ayant cause a perpétuité se réservant de se servir de la dite rivière comme ci-devant et autres droits seigneuriaux dans icelle.

Quatrièmement.—Déclarant les dits Sieur et Dame Duchesnay sous la dite solidité pour eux leurs dits hoirs et ayant cause à l'avenir qu'ils vendent, cedent, quittent et accordent avec garantir de tous troubles et empêchement quelconque provenants de leurs faits et promesses, seulement aux dits Sieurs acquereurs leurs hoirs et ayant cause à l'avenir, ce acceptant *comme dit est, les deux tiers de l'usage et droits de l'eau de la rivière de Beauport au dessus pour la dite chaussée et moulin* comme faisant partie des ventes des autres parts, promettent et s'obligent les dits Sieurs et Dame Duchesnay pour eux et leurs hoirs et ayant cause qu'ils *ne détourneront l'eau de la rivière de son cours naturel au dessus de la dite chaussée de manière à priver les dits Sieurs acquéreurs, leurs dits hoirs* et ayant a cause à l'avenir de la dite eau se reservant les dits Sieurs et Dame Duchesnay, leurs hoirs et ayant cause à l'avenir et à perpétuité la liberté de construire des moulins sur la dite rivière ou faire autres usages de la dite rivière sans en détourner le cours naturel comme a été expliqué et convenu ci dessus et sans priver les dits Sieurs acquereurs ou leur representant de leur liberté et transport dans la dite rivière comme expliqué a l'article troisième.

Cinquièmement.—Seront les dits Sieurs Duchesnay et la dite Dame son épouse et leurs hoirs et ayant cause à l'avenir de charge de fournir les dix pieds de terrain en largeur à la rive nord est de la dite rivière au dessus du terrain que la dite chaussée inondera comme il était convenu entre lai dit Sieur Duchesnay et le dit Sieur Peter Stuart par leur dit acte du vingt sept Janvier, mill huit cent quatre-ving-cinq. Article quatrième.—Le dit Sieur Peter Stuart ayant été ci devant au présent acte decharger de fournir pareils dix pieds que le dit Sieur Peter Stuart était tenu d'acheter sur la rive sud ouest de la dite rivière suivant l'article troisième *in fine* du dit acte du vingt sept Janvier mill huit cent quatre-vingt-cinq.

Sixièmement.—Seront tenus les dits sieurs acquéreurs leurs dits hoirs et ayant cause de se conformer de point en point aux procès verbeaux de Jean Renaud écuier. Voyer pour le District de Québec en date du dix sept mai, douze juin et dix huit Août mil sept cent quatre-vingt-cinq concernant les chemins et ponts mentionnés aux proces verbeaux homologué au Conseil suivant l'ordre du trente et un Aoust de la dite année mill sept cent quatre-vingt cinq. des quels procès verbeaux et homologation lecture à été faite aux dits Sieurs acquéreurs lesquels en ont requis copies collocationnees, de sorte que les dits Sieurs Duchereau Duchesnay et Peter Stuart, leurs dits hoirs et ayant cause à l'avenir en sont de ce jour et en seront toujours décharges.

Septièmement.—Conviennent les dits sieurs acquéreurs de payer au dits Sieurs Duchesnay comme Seigneur de Beauport, les lots et ventes de la somme de mil livres cours d'Halifax prix de ventes en ces présentes du dit Sieur Peter Stuart. Reconnaissant aussi les dits Sieurs acquereurs avoir acquis les dits terrain, chaussée, moulins, hangard, et autres dépendences, sus-vendus, tel que le tout est actuellement dont ils declarent être satisfaits et content pour

avoir le tout vu et visité, et en avoir pris possession dès lundi dernier le sept du présent mois en contemplation du présent acte.

Huitièmement.—A été unanimement convenu et avoué entre toutes les dites parties que les articles separées ci-dessus font corps avec le present, act n'ayant été ainsi mis séparement que pour plus grand éclaircissement des conventions des parties et pour fixer et determiner invariablement les droits respectifs des parties en ces presentes et par icelles. Et enfin prevenir toutes difficultées. Et au moyen des charges, clauses, conditions et reserves ci-dessus mentionées, detaillés et convenus par ces présentes les dits Sieurs et Dame Duchesnay et le dit Sieur Peter Stuart chacun endroit soi, transportant et abandonnent aux dits Sieurs acquéreurs leurs dits hoirs et ayant cause tous les droits ci-dessus vendus pour par eux en jouir faire et disposer en toute propriété à perpetuité, et pour l'exécution des presentes les dits Sieurs acquereurs ont élu leur domicile irrévocable en la demeure actuelle des dits Sieurs Fraser et Young en cette ville rue Saint Pierre et les dits Sieurs et Dame Duchesnay en leur manoir Seigneuriale à Beauport et le dit Sieur Peter Stuart en sa demeure actuelle en cette ville rue Saint Pierre auxquelles lieux etc., nonobstant etc. Car ainsi etc., obligent et promettent etc, renoncent etc, fait et passé à Québec en l'étude de maitre Deschesneaux l'an des Notaires soussignés l'an mil sept cent quatre vingt douze le quatorzieme jour de Mai après midi, et ont les parties presentes signé après lecture faite.

JUCHEREAU DUCHESNAY.
DUPRE' DUCHESNAY.
PETER STUART.
JAS. FRASER & SELF.
JOHN YOUNG.
THOMAS GRANT.
JH. PLANTE'.

L. DESCHESNEAUX.

Pour copie conforme à la minute trouve dans l'étude de feu maitre L. Deschesneaux Notaire pour cette partie de la Province du Canada, ci-devant appelé Bas Canada, deposé dans les Archives de ce District evidimée et collocationnées par nous soussignés, gardiens d'icelles et Protonataires de la Cour Supérieure pour le Bas Canada, à Quebec le treizième jour du mois de Fevrier mil huit cent cinquante.

BURROUGHS & FISET.
P. C. S.

BIBLIOTHEQUE DE LA
VILLE DE MONTREAL

COLLECTION
GAGNON

31441